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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 239.

UNITED MINE WORKERS OF AMERICA, ET AL.,
PLAINTIFFS IN ERROR,
vs.
CORONADO COAL COMPANY, ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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S. P. McLaughlin	1747	1166

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Bob Bly	1755	1171
W. P. Upton	1761	1176
William Willett	1767	1180
Mrs. W. H. Argo	1769	1182
William H. Argo	1771	1183
J. W. Sylsberry	1789	1196
Roland F. Barnes, Deposition of	1797	1202
John T. Allison	1872	1253
Ewing Thomas, Deposition of	1882	1261
English Dougherty	1909	1280
Andrew Dougherty	1938	1301
Plaintiffs' Exhibit 42, Slip of Paper bearing Address,—C. E. Pattie, Box 376, Hartford, Arkansas	1951	1310
Plaintiffs' Exhibit 43, Slip of Paper bearing Addresses,—H. M. Strope, Frank Sharp, Box 672, Hartford, Arkansas	1951	1310
Dr. Oscar M. Neill	1955	1312
Mrs. Mahala Barnes	1961	1316
C. H. Langdorf	1963	1317
William Thomas, Deposition of	1984	1332
J. R. Bailey	2013	1352
Arch Caldwell	2033	1365
Ellet T. Goddard	2044	1372
James A. Murray	2045	1373
George A. Davis	2050	1376
J. Curtis Bohannan	2058	1381
William T. White	2061	1383
William Saunders, Deposition of	2073	1392
W. T. Forrester	2088	1402
Mrs. John Degen	2093	1405
James H. Meeks	2104	1413
Elmer Bohannan	2115	1421
John W. Baker	2118	1423
Charley Cheek, Deposition of	2121	1425
William V. Womack	2156	1449
William J. Goatcher	2164	1455
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Charles Suttles, Deposition of	2174	1463
Mrs. Rhelda Perry, Deposition of	2195	1476
A. W. McGee, Deposition of	2220	1493
Lee Bishop	2224	1495
James O. Johnson, Deposition of	2228	1498
Mrs. Preddro Brown	2250	1514
Harry Dunlap	2256	1518
Levi Brown	2270	1527
J. L. Briggs	2283	1536
Ewell Doughit	2286	1538
Mike Doughit	2293	1542
Fred Francis	2298	1545
David Stanley	2306	1551
Melvin Roberts	2311	1554
S. T. Moore	2314	1556
Joseph A. Parrish, Deposition of	2323	1562
Ed Parrish, Stipulation as to	2335	1571
Mrs. Eva Trannell, Stipulation as to	2336	1571

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N. G. Tyler, Deposition of	2346	1578
Hannibal Green	2355	1584
Joseph A. McConnell	2361	1588
Mike Doughit, Re-called	2368	1593
Charles L. Reierson, Deposition of	2369	1594
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7, Letter, Remington Arms-Union Metallic Cartridge Co., to H. B. Hill, June 19, 1914	2388	1607
10, Telegram, H. B. Hill to Remington Arms-Union Metallic Cartridge Co., June 18, 1914	2393	1611
11, Telegram, Remington Arms-Union Metallic Cartridge Co., to H. B. Hill, June 18, 1914	2394	1612
1, Telegram, Remington Arms-Union Metallic Cartridge Co., to H. B. Hill, June 10, 1914	2395	1613
2, Telegram, Remington Arms-Union Metallic Cartridge Co., to H. B. Hill, June 10, 1914	2395	1613
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4, Letter, Remington Arms-Union Metallic Cartridge Co. to H. B. Hill, June 10, 1914	2396	1613
5, Order to the Remington Arms-Union Metallic Cartridge Co., from H. B. Hill, June 10, 1914	2397	1614
8, Order to the Remington Arms-Union Metallic Cartridge Co., from H. B. Hill, June 17, 1914	2398	1615
9, Order to the Remington Arms-Union Metallic Cartridge Co., from H. B. Hill, June 17, 1914	2398	1615
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Lee Rogers	2435	1641
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Mrs. Fannie Briggs	2440	1645
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Garland C. Choate	2443	1647
Harry B. Hill, Deposition of	2448	1651
Sam Thomas	2463	1659
Leo S. Schell, Deposition of	2476	1668
John Laws	2502	1686
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Invoice Atkinson-Williams Hardware Company, to John Mastell, $230.00, June 13, 1914	2505	1688
Invoice Atkinson-Williams Hardware Company, to John Mastell, $362.94, June 22, 1914	2507	1690
Henry Edward Morgan	2509	1690
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Bascom Allen	2518	1697
S. T. Brown	2522	1699
E. Lee Harmon	2525	1701
S. T. Brown, recalled	2534	1707

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William D. Tharel	2536	1708
Bud Porter	2541	1711
S. P. Epperson	2544	1715
William F. Meeks, Deposition of	2549	1718
J. E. Boring	2582	1740
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Plaintiff's Exhibit 58, Check-off list turned in by the Secretary of Local Union, 1526 and 1530 of the United Mine Workers of America, Recital of	2583	1741
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W. R. Eustice	2593	1748
I. L. Cole	2596	1750
J. F. Rauser	2600	1753
Charles Baskins	2604	1755
W. J. Smith	2608	1758
Mrs. Sabitha Smith	2610	1759
Miss Millie Smith	2612	1761
J. B. Atkisson	2615	1762
Hugh R. Rankin	2619	1765
Paul C. Hamilton	2622	1767
Charles Dalton	2630	1772
Pleasant P. Baker	2634	1775
John S. Shaleen	2640	1779
Clarence A. Shaleen	2648	1785
Frank M. Morgan	2652	1787
E. F. Hackett, Deposition of	2654	1789
D. A. Steele	2675	1804
J. J. Johnson	2679	1806
F. A. Youmans	2690	1814
Roger B. Hull	2694	1817
F. A. Youmans, recalled	2696	1818
Letter to Judge Youmans, July 27, 1914	2698	1819
A. M. Chitwood	2701	1821
Will Bohannan	2706	1824
E. G. Castell	2709	1826
D. VanHecke	2713	1829
James R. Cole	2714	1829
Sid Johnson	2716	1831
J. N. Hamilton	2718	1832
Dr. E. B. Jones	2720	1833
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Plaintiffs' Exhibit 60, Check of United Mine Workers of America, District 21, to Hayden Sporting Goods Co., $411.99, June 30, 1914	2725	1836
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M. W. Weston, Deposition of	2739	1845
M. W. Weston, Deposition of, recalled	2751	1854
St. Cloud Cooper	2753	1855
John Weston, Deposition of	2755	1856
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Mack Weston, Deposition of	2772	1867
W. B. Kissinger, Deposition of	2782	1874
H. H. York, Deposition of	2791	1880
Hilbert Stroupe	2803	1888
W. C. Harp, Deposition of	2815	1897
George Simmons, Deposition of	2822	1902
Howard H. Redner	2837	1912
Rufus H. Lamb	2840	1914
Howard H. Redner, recalled	2845	1918
M. B. Willsley	2847	1919
M. O. Willsley	2858	1926
Plaintiffs' Exhibit 99, Stub of Check to Hayden Sporting Goods Co., $411.19, June 30, 1914	2861	1928
Amos S. Johnson	2862	1928
John E. Finney	2865	1931
Frank Pigg	2867	1932
Heber Denman	2871	1935
Edward J. M. Peake	3022	2039
W. E. Beaty	3026	2042
H. C. Rice	3030	2044
E. W. Hogan	3033	2046
J. P. King	3037	2049
William A. Evans	3043	2053
J. G. Peterbaugh	3044	2054
B. G. Moore	3056	2062
Heber Denman, recalled	3058	2063
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Inventory of Property owned by the Cherokee Construction Co	3074	2075
103 Contract between Cherokee Construction Co. and Mammoth Vein Coal Co., June 26, 1909	3090	2090
104, Contract of Lease between Mrs. Belle McEachin, et al., and Missouri Coal Company, May 1, 1907	3091	2091
120, Contract of Lease between Mammoth Vein Coal Co. and Prairie Creek Coal Mining Co., March 27, 1911	3101	2099
121, Contract of Lease between the Kali-Inla Coal Co. and the Mammoth Vein Coal Co., January 1, 1912	3103	2100
123, Contract of Lease between the Kali-Inla Coal Co., and the Mammoth Vein Coal Co., November 30, 1910	3105	2102
122, Assignment of Contract of March 27, 1911, between Mammoth Vein Coal Co. and Prairie Creek Coal Co. to Kali-Inla Coal Co	3107	2103
124, Contract of Lease between Denman Coal Co. and Mammoth Vein Coal Co., October 5, 1910	3108	2104
108, Contract of Lease between T. W. M. Boone and Wife and the Prairie Creek Coal Co., January 13, 1903	3110	2105
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	Original.	Print.
Authority and Agreement of Franklin Bache to the Deed of the Coronado Coal Co. to the Arkoal Company, October 5, 1909	3117	2110
Acceptance and Agreement by the Sebastian Coal Co. to the Assignment of Lease from Sebastian Coal Co. to Franklin Bache, October 5, 1909	3117	2111
Assignment of Contract of Lease between Sebastian County Coal Co. and Franklin Bache to Coronado Coal Co., January 1, 1907	3117	2111
112, Contract of Lease between Sebastian County Coal Co. and Franklin Bache, January 1, 1907	3120	2112
109, Assignment of Contract of Lease between T. W. M. Boone and Wife, and the Prairie Creek Coal Co. to Sebastian County Coal Co., November 22, 1904	3134	2121
113, Contract of Lease between Arkansas Coal and Mining Co. and the Coronado Coal Co., December 23, 1913	3137	2124
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Francis Feehan	3697	2512
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P. L. Harrison	3728	2533
Joe White	3738	2540
Thomas McDonald	3743	2543
M. M. McWilliams	3755	2552
Ed. W. Hogan	3757	2553
D. C. McAlpine	3760	2556
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J. D. Finney	3768	2561
P. R. Allen	3770	2562
J. G. Puterbaugh	3772	2563
James P. Hoye	3775	2565
R. A. Young	3777	2566
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W. S. Sampson	3782	2570
Dan Wilcox	3784	2571
Nick Berkell	3787	2573
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Theresa Del Rosa	3799	2582
Elberta Johnson	3802	2584
H. H. Martin	3813	2591
Jessie Thompson	3814	2592
Mrs. Sam Dorman	3821	2599
Mary Mastell	3833	2607
Mary Manick	3837	2610
Charles Howard	3844	2615
Pete Stewart	3847	2616
L. Schmidt	3851	2619
Charles Clayborn	3866	2629
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Ed. Ables	3919	2666
Dr. V. V. Butler	3927	2671
W. L. A. Johnson	3931	2673
F. W. Lukens	3934	2675
John Bumpas	3945	2682
Sarah Hobbs	3958	2691
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Will Miller	4057	2759
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Harry N. Taylor	4070	2768
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John T. W. Davis	4118	2801
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Ed. Baker	4127	2807
George Fuller	4130	2808
Mrs. Charles Gooden	4132	2810
Cale R. Jones	4135	2811
Fred Evans	4137	2812

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Dr. H. C. King	4146	2818
Marion Hulsey	4152	2822
James Doyle	4157	2826
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Orelia Jennings	4394	3007
Mrs. Leon Green	4398	3010
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E. Marianelli	4406	3015
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2544 S. P. EPPERSON, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. S. P. Epperson.
Q. Where do you live? A. I live in Oklahoma.
Q. What is your business? A. Farmer.
Q. Were you born and brought up on a farm?
A. Yes, sir.
Q. Were you employed by the Bache-Denman Company in 1914? A. Yes, sir.
Q. In what capacity?
A. Working there,—in what way do you mean?
Q. What were you to do at the mine?
A. I was guarding there.
Q. Do you remember the day of the big battle, July 17th?
A. I think so, yes, sir.
Q. Will you ever forget it?
A. I dont think I will.
Q. Beginning the night before the battle, what did you hear and what occurred?
A. Well, along some time in the night,—I dont think I heard anything, but some time along in the fore part of the night, the lights went out. I had just went and laid down in a tent close to the night guard out next to the road that runs out next to the school house, and he came to me and he said, "Epperson".—
Q. (interrupting). Who came to you?
A. The night man that was out next to the road. He came to me and he said, "I want you to stay with me tonight", and I said, "All right", and I got up and went out and sat with him the rest of the night.
Q. What happened?
2545 A. Well, just about the break of day, or it was beginning to get just a little light, there was a bunch of men came along the road, it looked like about four deep, the best I could tell, it was just beginning to get light. I could not say how many there were of them, perhaps about 15 or 20. I never counted them, just a bunch of them, and this fellow told me,—he said, "I will run down in the camp and tell them". And he said, "You stay here", and I said, "All right."
Q. How many were in that crowd?
A. I could not tell for sure how many was in the crowd, about 15 or 20, or something like that.

Q. Did they have guns?
A. Yes, they all had guns.
Q. What happened after he left you?
A. Well, they had got just a few steps on,—there was four, it looked, just behind the main bunch that went along. They were back it seemed like ten or twelve feet behind the main bunch, and they got out just a little ways, and they turned around and shot at me, they shot four shots at me.
Q. How many shots? A. Three or four.
Q. Did those shots come pretty near you?
A. Yes, that is one time I said, "I dodged them bullets". It looked like they shaved the hair of my head.
Q. What happened after that?
A. Well, the crowd,—they went on down the road. They went on down a piece of then a lot of firing taken place, I could not tell how many guns went off. It seemed like 75 or 100. That is just a few minutes after they passed.
Q. How far from the Huntington road were you when you were guarding there with the night guard, the night before the battle began?
A. That road that leads out to the school house?
2546 Q. Yes. A. It was not but just a few feet.
Q. There were some tents you slept in right by the gate? A. Yes, sir.
Q. Right by the gate to the mine property? A. Yes, sir.
Q. What did you do then?
A. Well, I stayed there until that man came back and we sat there and talked a few minutes and I went on down to get my breakfast. I worked out at the fan house, and after breakfast I went out there.
Q. Were you a guard at that time?
A. Yes, day guard there.
Q. And you had guarded the day before that? A. Yes.
Q. And you went to your post again that morning?
A. Yes.
Q. What occurred there?
A. Just as I got there, I seen the night men's guns were sitting there, and their ammunition and no one was there, and about that time the firing began to break loose up toward the school house and the tipple,—the fighting; and I said to myself, "I dont know what to do hardly with the guns sitting there". And three men and Andy Merry came up to where I was.
Q. Who was he?
A. I think he fired the boiler. And I said, "Andy, you take one gun and I will take another and we will go back to

the tipple where they are fighting"; and he said, "No, dont be in any hurry"; and about that time the smoke began to raise. There was a row of houses on the hill behind the fan house.

Q. Was that in No. 3 camp? A. I dont know.

Q. As you stood there at the fan house and looked over at No. 4 shaft, was it back to the left?

A. It was back over that way (indicating). There
2547 was a row of houses up there and I seen the smoke begin to come over the hill and I heard a woman or two screaming and I said to Andy, "Let's get away from here". "They are all up there now", and he said, "All right"; and we went back to where the tipple was.

Q. Did you hear or see any bullets down by the tipple?

A. I didnt see any but I heard them.

Q. Describe the shooting a little?

A. I could not do that. The guns were popping as fast as they could, it sounded to me like.

Q. What did you do?

A. Well, I stood around there a while, around the shed, and around those trees by the wash house a part of the time. I would go down to the boiler and there was some women and children in the boiler and I would go back there to see if any of them were hurt. I was afraid some of them would get killed.

Q. What did you do then?

A. Well, I would get up and walk around some place, around a tree somewhere perhaps.

Q. When did you leave the mine?

A. About 12:00 o'clock.

Q. Did you leave with Buster Moore? A. Yes, sir.

Q. How many went out with you?

A. I could not tell, 25 or 30.

Q. Where did you go after,—you got started with Buster Moore, you say? A. Yes, sir.

Q. Where did you go after that?

A. Well, we came out across over the ridges, someway I couldnt tell you. It was after night,—I said after night, of course it was, it was that evening, and we came out of the woods and struck the road and followed the road right on around, and walked into Fort Smith.

Q. Do you know how far that is?

2548 A. No, sir, I couldnt tell you.

Q. How long did it take you to walk it?

A. We walked that evening, that night, and got over here to south town, I guess, something near seven o'clock the next morning. I know I was awful tired.

Mr. Hull: That is all.

Mr. Covington: No questions.

Witness Excused.

2549 Mr. Hull: I would like to use this time now to read another deposition; we are getting a little behind with our depositions.

We offer the deposition of William Francis Meeks, taken in the City of Fort Smith; both sides being represented by counsel:

(Reading.)

"WILLIAM FRANICS MEEKS, a witness for the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your name? A. William Francis Meeks.
Q. Where do you live? A. Fort Smith.
Q. What address?
A. 202 North Sixth [Stree]; that is where I was working when called out in the service.
Q. What is your present occupation?
A. Seargeant in the National Guard—Company D Second Arkansas.
Q. When did you first go into the National Guard?
A. September 13, 1916.
Q. Did you go to the [Bourder]? A. I did.
Q. How long were you at the Border?
A. From September 17—I think I got there on the 17th—and remained there until the 18th of December, 1916, and sent back—the First Arkansas in the Recruiting service got back the 28th of January, 1917.
Q. Back to Deming? A. Yes, Deming, New Mexico.
Q. When did you leave the service?
A. The 9th of March.
Q. What did you do after you were mustered out?
A. I was at Hartford on a vacation for a month or so.
2550 Q. Then what work did you take up?
A. Went to Nowata, Oklahoma, and took a job as bill clerk for the Iron Mountain.
Q. Were you at some time soon after that made bill clerk at the Rock Island Station at Hartford?
A. Previous to that,

Q. When were you bill clerk at the Rock Island Station at Hartford?

A. 1913 to July 31, quit July 31, 1916.

Q. You began there when? A. August 1st, 1913.

Q. Do you recall one night when you were clerk at the Rock Island station, in the spring or summer of 1914, seeing some trouble at Berson's Restaurant in Hartford?

A. Yes, sir.

Q. Will you state the details of what you saw and heard there at that time?

A. I was going to the Post Office for my mail on the evening the trouble came up at Berson's Restaurant. I do not know just what time, but it was between six and eight or nine o'clock, probably between six and eight, I don't know the date, never paid any attention to particularly—I saw a crowd in front of Berson's restaurant.

Q. How many men? A. Ten or fifteen men.

Q. All right.

A. I do not know any of their names outside of Jim McNamara.

Q. What did you see Jim McNamara do?

A. I saw him pull this fellow Argo—I don't know his name—from the restaurant, and pushed him and kicked him on the streets.

Q. Was Argo down on the ground?

A. I think he knocked him down.

2551 Q. Did you hear any conversation between Argo and McNamara?

A. I believe I heard him tell him, I believe I heard Argo tell him that he had quit the Bache-Denman Coal Company he had been working for and that he was going home, or on his way home to his wife somewhere, I did not know where it was at that time; and he asked Jim to let him alone.

Q. What did McNamara say to Argo?

A. McNamara made the remark that he ought to kill the scabbing son of a bitch, or something like that; I believe that is about what he said; a few remarks made in that line was all I heard said.

Q. What did you do then?

A. Argo, I am not positive whether the City [Marshall] took him back to El Dorado Drug Store, about a block and a half north of Berson's restaurant or whether he went back —anyway I followed the [mod] or crowd followed Argo down there. Argo was in the rear of the restaurant talking to Dr. Chambers.

Q. The rear of the drug store?

A. Yes; Dr. Chambers had his office in the rear of the drug store.

Q. West's Drug Store?

A. West's Drug Store; I don't remember whether Argo was bleeding or not, but it strikes me that he was; I am not sure.

Q. Was Sell Goddard there?

A. He came in, he was there, any way Sell and I walked with Argo immediately after he was talking to Dr. Chambers, to the depot of the Rock Island and remained there until train 41 went west about eight or eight-fifteen o'clock, the schedule at that time.

Q. Did Argo get on that train?

2552 A. Yes, sir; got on the train and left.

Q. Do you remember the date of Monday, April 6, that year, when there was some kind of meeting at the school house at Prairie Creek?

A. I remember the meeting, yes, sir.

Q. Did you go out to Prairie Creek school house on that day? A. Yes, in the afternoon.

Q. How did you know about this meeting?

A. I heard people talking, several statements on the streets that they were going to have a meeting of some kind out there.

Q. What did you see when you got out there, and what did you hear?

A. Well, there looked to be about a thousand or two thousand people there; and there was, I believe, Miss Hogam.

Q. Can you identify her.

A. She is a blond and wore glasses and red hair as well as I remember.

Q. Do you remember whether it was Freda Hogan?

A. Freda Hogan, I believe that is her.

Q. Did you hear her make a speech? A. Yes.

Q. What did she say?

A. Something in regard to the trouble at that time between the United Mine Workers and Bache-Denman Coal Company No. 4 Prairie Creek. I do not know the words she said, but (I don't know what you might call it) she was making remarks of that kind in behalf of the United Mine Workers.

Q. What was the general tenor of her remarks, if you cannot speak the words precisely, what is your best recollection of what she said in general?

A. I do not know as I can recall any sentence, and
2553 exact words she repeated.

Q. Without trying to recall any words or sentence, what is your recollection of what she said in your own words?

A. Well, she was there for the purpose of getting the sentiments of the citizens and people around Huntington, Midland and Hartford in order to show to the Company that they wanted to be recognized and wanted different conditions at Mine No. 4. She made remarks along that line.

Q. Did you hear any one else make a speech?

A. James Slankard, I believe, made a speech. I believe I heard him say a few words in regard to appointing a committee at that time, I do not remember the name the Superintendent of Mine No. four. I do not know his name, I saw him later, after the speaking, after the crowd had already gone from there, I saw this Superintendent.

Q. Was his name Cameron?

A. It appears that is his name, about 45 years old, looked to be.

Q. You say Jim Slankard spoke a few words about appointing a committee to go down to the Mine to see the Superintendent? A. Yes, sir.

Q. Did you hear anyone else up there at the school house make a speech?

A. James McNamara, I believe, said a few words along the same line as Miss Hogan and James Slankard.

Q. Who seemed to be the chairman of the meeting if there was one?

A. I don't know who was Chairman, but James Slankard, it seemed like, was leading one to get the committee to see the Superintendent of the mine.

Q. Was there anything said at that meeting about going over to No. Four and ask the men to quit work?

2554 A. That was mentioned in both statements, James Slankard and James McNamara; I know they made these remarks.

Q. Do you know whether or not a committee was appointed?

A. I did not see nor heard the Committee appointed, but a committee was appointed.

Q. Do you know who was on that committee?

A. I do not.

Q. Did the crowd at any time go over towards the mines?

A. They did immediately after the speaking.

Q. Did you go with the crowd?

A. I went with the crowd.

Q. Do you know where this crowd came from?
A. It came from Huntington, Midland and Hartford, all those mining towns around there, they were represented.
Q. Was there a band there? A. Yes, sir.
Q. Do you know where that band came from?
A. I believe it came from Huntington, Arkansas.
Q. Did you see a banner and flag.
A. I saw one United States flag. I did not see any other that I remember of; I do not recall seeing any other flag.
Q. You say there were between a thousand and two thousand people at and around the school house? A. Yes, sir.
Q. Who made up that crowd; I mean who comprised the crowd? A. Who called the crowd out?
Q. No, what was the crowd composed of, what people?
A. The miners and citizens, miners and business men all three of the towns, Midland, Hartford and Huntington, they were business men from both towns and farmers from out around these towns, miners from all three of the towns.
Q. Now, state, without my having to ask you any detail questions, what you saw at the time when you say you followed the crowd to the mine?
2555 A. After that, there was some fellow with me, I don't know exactly who went with me, cannot recall the fellow; we heard they were having a meeting out there, and some fellow insisted on my driving out with him, and I left the office and went out there where they were at this old school house. When we got there, there were several speeches made, and a committee appointed to go to see the Superintendent, and they appointed this committee, some one did, I don't scarcely know who, but they went to Mine No. 4 where the Company was working, and the people were waiting at the school house until they could return from the Superintendent of the mine, but they didn't wait.
Q. How do you know they were to do that? Go ahead and tell just what happened as if you were writing a letter about it?
A. The people were waiting until they could get some definite answer from the superintendent through the committee, but they didn't do that. [The] moved on over towards the mine. I followed them. There was the office sitting right off—the mine sits north east from the school house, and the office was between the school house and the mines where the people made this statement.
Q. How far was the office from the mine?
A. Looked to be about two or three hundred yards, something like that; and James Slankard told the people not to make a rush towards the mine; to stay back across the rope.

At that time there was a rope stretched around the mine, steel rope around the office and also the mines; and the people gathered around this rope, all around. There was two guards standing on the inside of the rope in front with rifles. The mine up here was operating, smoke was coming from the flues,
the fire in the furnace. I don't remember whether they
2556 were hoisting coal or not; but in the mean time the
guard, this big one-eyed fellow who weighed about two hundred pounds (I don't know his name)—the guard was standing over north east of the office (the majority of the people were there) and I was on the southwest of the office, just back of the majoirty of the people; and I heard the question asked this big guard how long he had been in that kind of business. (I did not know what they meant.) He replied, that he had been there fifteen years and had never got hurt nor shot. Then the question was asked if he thought he could get by in Arkansas guarding scabs. He said he was not expecting any trouble, and felt safe. In the mean time three or four fellows rushed under the rope and over the rope and grabbed his rifle. He had his rifle, I don't remember whether he had it ["presetn arms"] or "order arms," or where, but had a rifle in his hand.

Q. Was he pointing the rifle at anybody? A. No, sir.

Q. Did you at any time see him point the rifle at anybody or use it any way?

A. No, sir, just had the rifle in his hand something like this (indicating port arms). I do not know who the fellows names that rushed in there, but they were three or four fellows looked to be foreigners some of them, looked to be foreigners and American men. Some fellow took the gun from him and [thashed] him over the head with it and knocked him down. By that time there was eight or ten fellows around. In the mean time the other crowd was standing about ten or fifteen paces rushed on him and beat him up. This other fellow (not the one-eyed big fellow) rushed in by me to the office. Four
or five grabbed him and struck him in the face, one or
2557 two after him. I do not know just how they did, but
anyway people went over the fence and rushed up to the mines and had him pull the fire or furnace, pull the fire.

Q. Do you know the man's name that was firing?

A. I don't know the man's name, but the man supervising was named Looper.

Q. How old a man was Looper?

A. Looked to be between forty and fifty years old. Looper told them if they would not hurt them in any way, he would pull the fires of the furnace and quit.

Q. Did they threaten him?

A. They threatened him and told him they had a good mind to throw him into the furnace and burn them up and the rest of them, and the fire was pulled. Maybe after the fire was pulled from the furnace, Mr. Looper walked out of the boiler room and was standing talking. There was three or four or five fellows standing talking to him, and fifty or seventy-five around him, and there were several questions asked him why he was scabbing when he knew he ought not to, or something. By that time some big fellow hit him and knocked him down and they were beating him; and Louis Fiorretti and myself rushed thru the crowd and pushed the crowd back. I recognized the one big fellow just standing over fixing to stomp him, and I pushed him back, and Fiorettis assisted Looper to get up and taken him away, and the City Marshal, Louis Fioretti and I went back. In the meantime I heard them [holloaing] just one fellow, I don't know who, away from the mine, I suppose he was a [labor] of some kind around the furnace.

Q. Did you see or hear Jim Slankard while he was on a flat car around the platform, while the crowd was rush-
2558 ing the mine, as you say, making a speech.

A. Yes, I did. I heard him tell the people to wait till [them] got a decision from the committee and not rush in on the mine and destroy it anyway, property, anyway. [There] were waiting on the decision but they didn't do it.

Q. Did you hear him make any announcement that the Superintendent had agreed to shut the mine down?

A. Yes, he did.

Q. When was that?

A. That was at the time he made the remark that he thought the Superintendent had agreed to shut down and to stay back.

Q. Was that before or after?

A. That was in the meantime the crowd was rushing over fixing to rush over.

Q. Was that before the time or after the time when you and Louis Fioretti pulled the crowd off of Looper?

A. That was before?

Q. How long before?

A. Twenty or thirty minutes, I guess.

Q. At the same time, during the spring of 1914, did you see two fellows in the streets of Hartford in some trouble with a man named Roy Smith? A. Yes, sir.

Q. Tell the court all about that?

A. I was in the streets in front of the Jewel Theatre.

Q. When was that?

A. It was along about sometime about this trouble; same year.

Q. State what you saw?

A. There was some fellow walking down the street inquiring of several fellows where No. 4 Prairie Creek was; some of them asked him why he wanted to know, and he said
2559 he was from Pennsylvania somewhere; came down over the Midland Valley and they put him off at Hartford instead of Prairie Creek; and this Roy Smith rushed in on him and knocked him down and called him a scab, and had no business in there, to get out of town and not go to Prairie Creek but leave the country, and they found a [raxor] on this fellow is about all.

Q. [Die] he have the razor out using it? A. No, sir.

Q. Found it in his pocket? A. Yes sir.

Q. Did they take the razor away from him?

A. I don't remember whether they did or not.

Q. Where did Roy Smith work if you know?

A. I believe he was working at No. 4 Central.

Q. Anything else?

A. This Smith fellow went to the barber shop, I saw him in there later, and I never saw him after that in Hartford that night.

Q. Do you remember one night hearing Pete Stewart make a speech? A. Yes, sir.

Q. State what you know about that.

A. That was the time that Judge Little, Mel Dodd, Pete Stewart, and Mrs. Johnson, the editor of the Hartford Observer, was there.

Q. Who made speeches?

A. Pete Stewart, Judge Little, and Mell Dodd, I believe that is all I heard.

Q. What was the occasion of the meeting—what kind of meeting was it, if you know?

A. I suppose it was a kind of political meeting.

Q. That is what you gathered?

A. From the tone of the speeches.

Q. Did you see Jim Slankard there?

A. I don't know, but I believe he was there.

2560 Q. Where was the meeting held?

A. Held above the old Oliver [Meet] Market in the Old Eagles Hall in a frame building up stairs.

Q. How many men up there? A. About one hundred.

Q. Who composed the audience?

A. A few business men of Hartford and miners.

Q. Now, state, as well as you can remember, what Pete Stewart said at that meeting.

A. He some remark about the Union men and their wives and children being run over by scabs and being shot and chased around; and he made the statement that if the Company, Bache-Denman Coal Company, allowed such to be carried on with guns and ammunition he would see that his men would be protected by letting them have the same.

Q. Do you remember anything further that he said? Do you remember whether he said anything about Colorado?

A. Yes, I believe he made the remark that Union men or their fellows were not going to be treated like Colorado Union men and their fellows were treated.

Q. How long had you known Pete Stewart?

A. I have known of him ever since I have been in Hartford.

Q. How long had you lived in Hartford?

A. Went there in 1911, and in and out of there until 1916.

Q. Do you know what position Pete Stewart held in the Union? A. No, sir; I do not know his office.

Q. How old a man was he?

A. He looked to be about fifty years old.

Q. Do you know whether he was a son Pete Stewart, called Little Pete?

A. There is a little Pete there at Hartford; I don't
2561 know whether he is his son.

Q. That was not little Pete?

A. No, sir; it was old Pete.

Q. Do you remember the day of the big trouble there—when they had some big trouble there at Prairie Creek?

A. Yes, sir.

Q. July 17th? A. Yes, sir.

Q. Were you in Hartford the night before that?

A. Yes, sir.

Q. On the streets? A. Yes, sir.

Q. Whom do you remember seeing on the streets that night? A. Several men.

Q. What kind of men?

A. They were foreigners, miners, foreign miners, miner Americans, but citizens and business men.

Q. Did you see any men with guns that night?

A. Yes, sir.

Q. How many?

A. I don' know; I [saq] quite a good many guns.

Q. Approximately how many men with guns did you see?

A. From about ten to twenty-five.

Q. Do you remember any particular men you saw with guns, by name?

A. There was one fellow there, I know his face; they said he was a half brother to James McNamara.

Q. Did he have a gun? A. Yes, sir.
Q. Describe him?
2562 A. He looked to weigh about one hundred and sixty or seventy pounds, with Sandy hair; looked to be about six feet tall, and red complected.
Q. Sandy or red?
A. It was red, it was sandy hair, looked to be about six feet tall.
Q. Do you know where he worked?
A. He worked at No. 4 mine I believe.
Q. No. 4 Central? A. Yes, sir.
Q. Do you know Sandy Robertson? A. Yes, sir.
Q. It was not Sandy?
A. No, sir, it was not Sandy.
Q. Did you see Jim McNamara on the streets that night?
A. Yes, sir.
Q. What was he doing?
A. He seemed to be gathering ammunition.

Mr. Covington: Tell what he did.

Witness. He was gathering ammunition, trying to get ammunition for the men who had shot guns.

Mr. Hull.

Q. What?
A. Getting ammunition for the men with sot guns and rifles, as if they were going some place.
Q. What did you say the yhad in that connection?
A. They were in the Hartford Hardware store getting ammunition out.
Q. What was Jim McNamara doing?
A. He was keeping check; checking it to them; there was some one with him but I don't know who he was.
Q. Was the Hartford Hardware store open?
A. Yes, sir, the doors were open.
Q. Was that Smoot's store?
A. He was the manager of it.
2563 Q. Was Smoot there?
A. I don't know; I don't think he was; I did not see him; never saw Smoot.
Q. You saw McNamara checking out ammunition to par ties.
A. Parties out there went in there, men come in for ammunition with guns in their hands and come out of the door, I cannot call any names. And parties up the street, — There was the usual confusion among the men on the streets

Q. These men that were going in with guns were supplied with ammunition and went out? A. Yes, sir.

Q. What did you hear on the streets in Hartford that night about what was going to happen at No. Four?

A. Ie seemed like—

Q. What did you hear?

A. The men who got ammunition to go to No. Four mine.

Q. You heard they were getting ammunition to go to No. Four mine? A. Yes, sir.

Q. From whom did you hear this?

A. I cannot recall any name.

Q. What was the occupation of these men? A. Miners.

Q. You knew then but cannot recall their names?

A. Yes, but I cannot recall names; scarcely know them; just as I would see them go by my office.

Q. You did know they were miners? A. Yes, sir.

Q. Were they so called scab miners?

A. No, sir, there was not at that time any so-called scab miners there.

Q. All United Mine Workers?

A. Yes, sir, I heard them say they would not allow a man to light in town if they knew he was a scab; I heard that remark made.

Q. By whom? A. Different men.

Q. By miners? A. Yes, sir.

2564 Q. And by men you knew to be union men?

A. They evidently were; I did not know them to be; I would not think they would make such remarks if they were not.

Mr. Covington. I specifically object to his statement to that effect. He says he don't know who they were. You say they were evidently miners."

The Court: Objection sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

"Mr. Hull.

Q. Now on the day of the battle: did you see some women and children brought into Hartford? A. Yes, sir.

Q. State what you saw in that connection?

A. I was standing on the corner near the Central Coal and [Come] Company Commissary and saw some women and children and men, I don't know how many, going into Hartford from the direction of No. 4 Prairie Creek at the time this trouble was going on.

Q. About what time of day was it?

A. It was in the afternoon, if I am not mistaken.
Q. What did you see done in that connection?
A. There were men with them I believe; this preacher Strope was with them. He didn't have any gun. There were one or two that did have guns.
Q. What did they do with these women and children?
A. I don't remember what they did with them. In fact I don't know what they did with them at that time; they were going across the street with them, and later they were making calculations to feed them among the citizens and business men of Hartford, to make up the money. I don't know whether they got up the money for them to get out
2565 of town or had money; they got money some way, and came to the office of the Rock Island and bought tickets two men. Didn't buy tickets for the women, but two men in the crowd got tickets for two men to Dayton, Tennessee.
Q. Who got transportation for these two men.
A. The Mayor of Hartford, at that time, was in the office with them and one or two others.
Q. What is his name? A. John Conroy.
Q. Who were with Mayor Conroy?
A. These two men that brought them in the office.
Q. The two men for whom tickets were bought?
A. Yes, sir.
Q. What other citizens of Hartford, miners of anybody else, were there with Mayor Conroy?
A. I do not remember now I believe Cell Goddard,the City Marshal, and probably one or two others.
Q. If you remember, state who bought the tickets for those two men to Dayton, Tennessee?
A. The tickets were handed, if I am not mistaken, to Mr. Conroy for those men.
Q. Handed by the ticket agent? A. Yes, sir.
Q. Who was the ticket agent at that time?
A. The records will show—I was working in the office.
Q. You were at the office when those tickets were handed out? A. Yes, sir.
Q. The morning of the battle, did you see some men with guns in the streets of Hartford?
A. Well, I saw two or three but the majority of them were all out of Hartford. There were scarcely any men to
2566 amount to anything, outside of the business men.
Q. Where did you go on the morning of the battle?
A. I was in the Central Office the morning of the battle, telephone office, for a few minutes.
Q. What did you see while there?

A. Central, the telephone rang, she answered the telephone and turned around to me and said that a message came in there to send men and ammunition out to No. Four mine, I don't remember the remarks word for word she made, and I told her she had better leave it alone and not have anything to do with it. I wasn't her boss at all.

Q. Who was the operator?

A. Then I was looking out of the window at the smoke rising from the mine.

Q. How high is the office?

A. A two-story building.

Q. Who was the operator.

A. Rena Jennings is the name of the central operator.

Q. Is she at Hartford now? A. Yes, sir.

Mr. Neal (reading):

"Cross-Examination

Mr. Covington.

Q. What is your home? A. Tennessee.

Q. What part of Tennessee? A. Coal Mont.

Q. When did you leave there? A. August 24, 1911.

Q. Where did you go from there?

A. Chattanooga, Tennessee.

Q. How long did you remain there? A. Two days.

Q. Where did you go from there?

A. To Temple, Texas.

.Q How long did you remain in Temple Texas?

A. Four days or a week.

Q. Where did you go from Temple Texas?

2567 A. To McAlester, Oklahoma.

Q. How long did you remain in McAlester.

A. Four or five months.

Q. What did you do in McAlester?

A. I worked at No. Two coal mine.

Q. In what capacity? A. Mule driver.

Q. What are your initials?

A. William Frances Meeks.

Q. By whom was that coal mine operated?

A. A fellow by the name of Jones.

Q. Where did you go from there?

A. From there to Hartford, Arkansas.

Q. Did you belong to the United Mine Workers while you worked in the mines?

A. I had a card, yes, sir, at that time.

Q. How long were you an active member of the United Mine Workers? A. Just while working at McAlester.

Q. Did you, at any time, during the four or five months you worked in the mine, enter into any agreement with your employe, or any other coal operator, to commit murder or arson to keep [to keep] non union coal off the market?

A. No, sir.

Q. Did you enter into a conspiracy with your [employe] or enter into any contract, agreement or understanding with your Coal Company that you worked for, or any other person or persons engaged in producing coal with union labor to go out and commit acts of violence or lawlessness, or commit murder or arson to get rid of the mines producing non union coal? A. No, sir.

Q. You didn't do that? A. No, sir.

Q. You never heard of that?

A. Not at that time.

2568 Q. You attended the meetings of the Local?

A. No, sir.

Q. What kind of a member were you, tell us?

A. I carried a card is all, I was a kind working for a living and had to have a card to work at the mine.

Q. You never attended at all? A. No, sir.

Q. You say you were a kid, how old were you?

A. Eighteen years old.

Q. Pretty good sized kid? A. Yes, sir."

"Q. How long have you been in Fort Smith?

A. I have been in Fort Smith since June.

Q. You have never testified in any of the litigation growing out of the trouble at Prairie Creek? A. No, sir.

Q. Neither criminal nor civil? A. No, sir.

Q. When did you first give the plaintiff information of your knowledge of the various affairs to which you have testified? A. I never gave any.

Q. Do you know how they found out what you knew about this case? A. No, sir.

Q. You were never talked to by anybody? A. No, sir.

Q. Are you acquainted with Mr. Finley, receiver in this case? A. No, sir.

Q. Do you know Mr. Hilliard, the other receiver in this case? A. No, sir.

Q. Were you acquainted with Roger B. Hull, former assistant United States Attorney General.

A. No, sir; the first time I saw him was three or four days ago.

Q. Are you acquainted with Childs & Childs of Chicago?

A. No, sir.

Q. Do you know Henry S. Drinker? A. No, sir.

Q. You do not know anybody connected with it?
2569 A. Absolutely no, sir.
Q. Were you in the fight out there on the 17th of July, 1914? A. No, sir.
Q. You are certain of that? A. I am positive.
Q. You are sure of that? A. Yes, sir.
Q. Did you have a gun on that day? A. No, sir.
Q. Is it not a fact that Cell Goddard, the town Marshal, got a lot of citizens to get guns to guard the [the] town that night? A. Yes, sir.
Q. That information had come in that the guards at No. Four mine were going to attack Hartford. A. Yes, sir.
Q. And sent these men out there. A. Yes, sir.
Q. You had a gun that night? A. No, sir.
Q. You were not on duty? A. No, sir.
Q. No.
A. I was on the streets the night citizens had guns, but I did not have a gun.
Q. The merchants and business men were all out there with guns that night? A. Yes, sir.
Q. That was the night before the trouble the next day?
A. I don't remember.
Q. You remember the occasion they shot up Frog Town?
A. Yes.
Q. That was on two different occasions, that it was said Frog Town was shot up; two different nights, wasn't it?
A. The shooting up—the only one I remember began from what they said the citizens guarded the town, said shots began firing about four o'clock in the morning.
Q. You can't tell what they said. I want to know if one or two occasions Frog Town was shot up?
A. I don't remember two different occasions. I re-
2570 member it was shot up, is all I remember about it.
Q. You say that on this particular night the Hardware Store was open. A. Yes, sir.
Q. Who was in charge of the store?
A. I don't know just exactly that night.
Q. That is what I am talking about yes.
A. James McNamara was in there at the time. I don't know whether he was in charge or not; I don't know who was in charge.
Q. Do you remember anybody else? A. No, sir.
Q. Do you know anybody else in town except McNamara?
A. Yes, several.
Q. How many people—there were a good many people around there that night? A. Yes, sir.
Q. Can you name any other man?

A. I can name business men.
Q. Name them?
A. There was no business man in there at all.
Q. Where were the business men? A. I do not know.
Q. Jim McNamara is the only man's name you can remember?
A. That is all, yes, sir. There was several men in there.
Q. Who else in Hartford, do you know besides him?"

Mr. Neal: I will omit all of these names.

Mr. Hull: Then the impression goes out that the witness did not know anybody there.

Mr. Neal: I will read them then (continuing reading):

"A. Mr. Millhone the Post Master; C. A. Brooks, Vice-President of the Hartford Bank; Coal Brooks; L. West, Manager of the Eldorado Drug Store; W. J. Hamilton, Manager of the New York Store; Louis Ficretti, Groceryman; Sam Goddard, the City Marshal's father; Sell Goddard, City Marshal; Conroy, the Mayor; Clarence
2571 Jean; Rufus Jean; Mr. Suggs of the Central Coal and Coke Company; Professor Herlock; Ashly Hallison, used to be there, but is not there now.
Q. Is that all you know now?
A. I could name several.
Q. Out of the men you named, did you see any of them that night, the night referred to, in which you say they were out there with guns guarding the town?
A. I saw Mr. Herson, Dr. Cambers, I saw him in his office. I saw L. West in the drug store, in his place of business; and Cell Goddard on his post.
Q. You state they seemed to be fixing to go somewhere?
A. Yes, sir.
Q. You inferred that from the fact that they were there with guns? A. Yes, sir.
Q. And getting ammunition?
A. Yes, sir; the men were numbling something about No. Four Prairie Creek.
Q. You say a report came in that they were going to make an attack on Hartford, and that Cell Goddard was putting out guards that night?
A. Not under those circumstances you asked me about.
Q. I thought they were puting out guards that night?
A. Not this night. Not at hat time. They were getting ammunition to go out of town.
Q. When did they put them out?

A. Might have put them out after that. They were not putting out any guards at that time.

Q. When did they put them out; you said that Cell Goddard put out guards to guard the town to protect the town?

A. I know they did but not at this time, the time the
2572 ammunition was being gotten out of the hardware store for some purpose.

Q. Were the doors open? A. Yes, sir.

Q. Were not the windows broken open and didn't they go in thru the windows and take it out?

A. I did not see that.

Q. Wasn't Louis Fioreeti out there with a long gun on his shoulder walking up and down the streets?

A. I didn't see him.

Q. You saw Louis Fioreeti didn't you?

A. I don't remember seeing Louis.

Q. At the meeting that you say Judge Paul Little, Mell Dodd, Pete Stewart and others made speeches, I will ask you if you don't know that was a meeting of the Odd Fellows on a special occasion for the installation of the officers of the Lodge, or Knights of Pythias, or one of the fraternal roganizations down there,—were not officers being installed that night, and wasn't that the occasion for their meeting?

A. I don't remember if it was; I do not really believe it was.

Q. You can remember what Pete Stewart said and nothing else that was said.

A. There wasn't anything said in regard to installing officers.

Q. Don't you know there was a public installation of officers of one of the fraternal organizations that night, and if that was not the purpose and object of the meeting?

A. There wasn't anything mentioned.

Q. Were you there at the time the meeting closed?

A. I wasn't there when they closed, but was there when the three fellows made speeches and went home.

Q. You were there when they met?

2573 A. A crowd was there when I got there.

Q. Who was speaking when you got there?

A. Judge Little, I believe.

Q. You remained during his speech?

Q. Who spoke next?

A. Either Pete Stewart or Mell Dodd, I don't remember which.

Q. When Stewart spoke, didn't they call for him for sometime and didn't he decline until they called for him repeatedly?

A. I suppose he was asked to make the speech at the meeting.

Q. You were there?

A. Not while the crowd was there, because I was working and paid no attention really; I understood there was a meeting of some kind and went up to see about it.

Q. Were you not in there when Pete Stewart was called on to make a speech? A. Yes, sir.

Q. Didn't they keep calling for him and didn't he decline at first to make any talk at all?

A. I don't think he did, no, sir.

Q. He just walked out and went to speaking?

A. He was asked; they had a program if I understand it for fellows to speak, called on the same as Dodd.

Q. What did Judge Little say that night in his speech?

A. Judge Little made a very nice talk; I do not just exactly know the tone of his speech there; I don't remember; I think he was really funny in some of his words; made a very fine speech.

Q. All you can remember it seemed to you to be a pretty nice speech.

A. Seemed to be to me; I don't remember just what he was hitting at.

Q. A very nice speech, but you cannot tell what he was talking about? A. No, sir.

2574 Q. What did Mell Dodd say, you heard him?

A. He didn't say scarcely much of anything.

Q. How long did Judge Little talk?

A. Between ten and twenty minutes.

Q. How long did Mell Dodd speak? A. About the same.

Q. How long did Mrs. Johnson talk—did she talk?

A. I didn't hear her.

Q. How long did Pete Stewart speak?

A. About the same.

Q. You cannot remember a thing on earth of what was said except what Pete Stewart said can you?

A. Mell Dodd made a remark something about justice of some kind; I do not know just how he did bring it out, but that sooner or later we would be getting justice, at the end of his speech.

Q. I will ask you if they did not call from the audience for Pete Stewart to tell them something about Prairie Creek, before he got up to speak?

A. Senator, I don't remember hearing that. I was standing in the rear door.

Q. When he started out with his speech, didn't he state to the audience, "I don't know very much about it, except

what I have heard; I hear that the guards at Bache-Denman are violating the law." A. Yes, that is what he said.

Q. "I hope they will refrain from it."

A. Yes, he said those words.

Q. And didn't he further say that if there were any miners in the audience there, he wanted them to understand that no violation of the law would be tolerated by the organization? A. Yes, sir.

Q. That audience was composed mainly of women children wasn't it? A. Yes, sir."

Court here adjourned until two o'clock, p. m.

2575 Monday, November 5, 1917, 2:00 o'clock p. m.

Court reconvened pursuant to adjournment, the parties appearing as before, and the following proceedings were had.

Mr. Drinker: If the Court please, we have a [petitition] to present with reference to the matter of the letter from the Prsident to Mr. Bache.

The Court: This refers to this letter. Did Mr. White produce it on behalf of the defendants, this letter?

Mr. Drinker: No, sir, he produced it and I—

The Court: Yes, I know. I didn't know whether you insisted it was introduced on the part of the defendants, and therefore is competent on cross-examination. It is not competent under any theory.

Mr. Drinker: May I present my theory? The proof has not gone as far as it will go. Mr. White answered by saying that personally he knew nothing about the matter, and we can show by the Executive Board minutes and speeches that he has made at different places, that he did know about it. We want to show just what that letter was that he answered. Our proof will be in a different shape from now on.

The Court: It is not competent, and unless you have something more definite than that I cannot admit it.

Mr. Drinker: That is only one of the items.

The Court: Then you had better get your other items.

Mr. Drinker: But by that time it may be too late to get this letter and offer it in evidence.

The Court: There must be some reason and foundation and there is nothing here now.

Mr. Drinker: Mr. Boring.

2576 Mr. Neal: I have not finished reading the cross-examination of the witness Meeks.

Mr. Drinker: I beg your pardon.

Mr. Neal (reading):

"Q. Now, Sargeant Meeks, we will go out to Prairie Creek on the 6th of April. I will ask you a few questions about that. You say that Miss Hogan was making a speech when you arrived? A. Yes, sir.

Q. You don't remember what she said in her speech?

A. I will take that all back, she was making a speech of some kind, but she made a speech directly after I arrived there.

Q. Refreshing your memory, I want to ask you if you do not know, that is, if you are not mistaken, about Jim McNamara being present at the school house that day?

A. Can you look back and see what remark I made about Jim McNamara? It seems to me like he was there.

Q. To refresh your memory, will ask you if old man Howard, after Miss Hogan got through speaking, did not get up and make a motion that a committee be appointed to confer with the mine officials, and in response to that, a committee was appointed consisting of his son C. S. Howard, Jim Slankard and John Minnick? A. Old man Howard?

Q. Yes, the old man himself?

A. I did not say Jim McNamara made the motion; I said it was made, by whom, I do not know. A committee was appointed.

Q. You are not certain Jim McNamara was there, are you?

A. Well, I could be mistaken. Yes, sir.

Q. Is it not a fact that this gathering called on the 6th of April, 1914, at the school house, referred to in your ex-
2577 amination-in-chief, was composed of a great many women and children? A. Yes, sir.

Q. And farmers? A. Yes, sir.

Q. Every class and condition was there?

A. Yes, that is what I said.

Q. The entire country was gathered in there? A. Yes, sir.

Q. You say about a thousand? A. Yes, sir.

Q. Fifteen hundred or two thousand.

A. Yes, composed, as I said, of farmers, business men, women and children and miners, business men of that country.

Q. There was a good many automobiles? A. Yes, sir.
Q. And wagons and buggies?
A. Yes, and mules and horses.
Q. Do you know who the big one-eyed fellow you referred to was? A. No, sir; I never saw him before.
Q. You did not know at that time that he was a Burns detective did you?
A. No, sir; I did not know what he was; that was the first and last time I ever saw him.
Q. Right there at that place? A. Yes, sir.
Q. You did not look right at him all the time, these people standing around? A. I could not see him all the time.
Q. The time you got there, did you just put your eye on him and keep it there, you did not see him all the time after you got there, did you?
A. Well, I do not know as I held my eye on him all the time.
Q. He rather attracted your attention. He looked like a bad man to you didn't he?
A. I did not pay much attention to that.
Q. Wasn't he standing in a threatening attitude, and
•2578 you thought he was going to shoot some of these people, and you kept watching him?
A. He was standing, if I remember, with a gun in his hand or on his shoulder the first time, had the gun on his shoulder.
Q. Then changed it in a shooting position?
A. Port arms or something like that.
Q. As if to strike or shoot?
A. It was in that position, yes, he could do either way.
Q. The reason you kept your eye on him was you thought he was fixing to shoot or hurt somebody?
A. I guess he was, he had the rifle in his hand.
Q. He looked just like the character of man that would do it, didn't he? A. I suppose he was there for that purpose.
Q. He looked just like a man that would engage in that kind of business?
A. Yes, sir; was a big ruffian all right.
Q. You say Jim Slankard come out and got on a coal pile or edge of a car and told the crowd to stand back, and not go over the ropes? A. Yes, sir.
Q. And told them not to bother anything? A. Yes, sir.
Q. They did not bother any property around the mine that day. A. No, sir.
Q. All they did was to take up a United States flag on the tipple? A. Yes, sir.

Q. There was a great many of those boys that lived here in Fort Smith at that time, carried away from here last night, the company? A. Yes, sir.

Q. Some of the defendants in this case were carried away last night? A. Yes, sir, Bill Reed.

Q. They are going out to fight for the same flag they
2579 tacked on the tipple? A. Yes, sir.

Q. You say you were with Louis Fioretti?

A. Yes, sir, I didn't go out there with him; at the time the beating taken place, I was with him.

Q. At the time Looper got struck? A. Yes, sir.

Q. You were with Louis?

A. He was standing close, when this attack, when this fellow made the attack, I said "Let's protect the man and not let him kill him."

Q. And helped push the crowd away? A. Yes, sir.

Q. It is a great pity that Louis didn't have you for a witness in this case; they got judgment against him for assisting in that beating. Did he assist in any way in beating Looper?

A. No, sir.

Q. On the contrary, you say that he tried to keep them off him? A. Yes, sir, he did.

Q. Did you know that Looper got judgment against Louis Fioretti for assisting in beating Looper and aiding in it?

A. He got a case against him. I was brought here in April 1914, to testify in Louis Fioretti's behalf, but was knocked out some way. I didn't testify.

Q. Who brought you here?

A. I was subpoenaed—Louis had me subpoenaed.

Q. The other side had you subpoenaed didn't they?

A. I don't know.

Q. The plaintiff in the case, Looper, had you subpoenaed?"

The Court: Can't you omit that portion, Mr. Neal, it is not competent under any theory here; do you think so?

Mr. Neal: Probably not. We will waive the rest of the cross-examination.

2580 Mr. Hull: Just one question on redirect that I want to read, if your Honor please. "Q. This morning in your testimony, Sergeant Meeks, in regard to one situation there was some confusion, at least in my understanding, and I want you to state again, in your own words, what you heard Pete Stewart say at the meeting at the old Eagles Hall.

A. In regard to the organization, as to whether or not they would take any action in self-defense in case they would take action and by supplying—in my own words, I don't know

whether—it was a general meaning that men would be supplied with guns if Mr. Bache and Denman would supply their men with guns. Mr. Stewart made the point not to do any violence or bad acts that is unless in self-defense. That is about the question asked before.

Q. State again what Pete Stewart said about Colorado, in connection with Colorado.

A. He said he did not want men, women and children of the union men treated as the miners were in Colorado."

Mr. Neal (reading):

"Recross Examiation

By Mr. Covington:

Q. He said he did not want men women and children slaughtered like they were slaughtered in Colorado?

A. Yes, sir.

Q. He also said he did not want them to violate any law or use any violence whatever and if there were any miners there he wanted them to understand that the organization would not tolerate that?

A. Would not tolerate it unless in self-defense.

Q. That is, if they acted at all, it must be in self-defense?

A. Yes, sir.

2581 Q. They must do no violence and violate no law?

A. No, sir.

Q. That the organization would not tolerate that?

A. No, sir.

Q. And the only mention he made of Colorado was that he did not want men women and children slaughtered there like they were in Colorado?

A. Yes, I think that is about the same as before."

2582 J. E. BORING, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examiration

By Mr. Drinker:

Q. State your name. A. J. E. Boring.

Q. What is your profession?

A. Agent for the Central Coal & Coke Company at Hartford, Arkansas.

Q. How long have you been in that position?

A. About eleven years.

Q. Now what is that book that you have brought with you?

A. That is the——

Mr. Drinker: Wait a minute, Exhibit 57. Now I would like to have these other papers marked and fastened together.

(The papers referred to, the book marked Exhibit 57, and the papers Exhibit 58, by the stenographer.)

By Mr. Drinker:

Q. Now, I hand you the book which you have produced here, and will ask you what that is.

A. That is the payroll and the list of all of our employees for April and July, 1914; for the full months of April and July 1914.

Q. Do you have charge of that book? A. Yes, sir.

Q. What are your duties concerning it?

A. Well, as head bookkeeper, I have charge of keeping the payrolls.

Q. Does that book show who were the employees of your company during those months? A. Yes, sir.

Q. All the names of the persons entered in there were employees of your company during those months, were they?

A. Yes, sir, at Hartford, Arkansas.

2583 Q. Were your companies operating union mines?

A. Yes, sir.

Q. Were all the employees in your company, during those months, members of the union?

A. All of these employees at the mines were. All of our employees, excepting in the mercantile and office department were members of the union.

Q. The mens names that appear on that book, were they union miners? A. Yes, sir.

Q. Now I hand you the paper or book, to which I have just been referring, the book marked Plaintiffs Exhibit 57, I hand you now a lot of papers, which you have produced, marked Plaintiffs Exhibit 58, consisting of a number of sheets, and will ask you what they are.

A. They are the original copies of the check-off list that is turned in by the Secretary of Locals 1530 and 1526 of the United Mine Workers of America.

Q. Do the names that appear on there consist of the employees of your company, members of the union, belonging to these locals, whose dues were checked off by your company during those months? A. Yes, sir.

Q. And any man's name who appears on that list, was an employee of your company, and also a member of the union during those months. A. They were supposed to be.

Q. Were they?

A. Where they were not working, they were not our employees.

Q. Is there any qualification you want to make to your answer that these men, whose names appear on that list, were working for the company, and were members of the union?

A. I will say all the men that were checked there were
2584 working for our company. This list will show what they were, and what men were turned in; there were some turned in that have left our employ, and were not checked.

Q. When you say checked, you mean received the check?

A. Yes, sir, and the money was paid to the union. The money was checked off of the employees.

Q. And the persons named signed the bottom of these lists, who were they? A. The Secretaries of the union.

Q. They were the secretaries of the union, did they sign there? A. Yes, sir.

Q. Who made out those sheets?

A. The secretaries of the union.

Q. The person whose name is signed at the bottom made them out, in each instance, did they? A. Yes, sir.

The Court: Under the rules under which you operate your mines there, was it customary for the unions, through its officers, to furnish you a list of their members, and you retain their dues, and pay them direct to the union?

A. Yes, sir, pay them direct to the union.

By Mr. Drinker:

Q. And that is what I understand these sheets are?

A. Yes, sir.

Q. On which the dues were paid direct to the union?

A. Yes, sir.

Q. Now the number of these sheets, referring to Local 1526, was signed by James McNamara, who was he?

A. He was the financial secretary of the union at that time.

Q. What local? A. 1526.

Q. And some are signed James McNamara, Jr., were they all the same persons? A. All the same man.

Q. Now, do you know whether he was the same James
2585 McNamara who was in prison on account of the Prairie Creek trouble? A. Yes, sir.

Q. The same one? A. Yes, sir.

Q. Now, did your mines work on the 6th of April, 1914?

A. Our No. 4 mine did not work at all on that day, and I think No. 7 started in the morning, but didn't work all day; I don't just remember now with regard to how long we did work.

Q. Why did they not work, if you know?

A. The principal reason was that there were very few men out there to work that morning, and the management stopped the mine.

Q. With reference to the 17th of July, did all of your mines work? A. No, sir, they did not.

Q. Why not?

A. There didn't any men come to work, is all I can say.

Q. Did James McNamara come back to work for you after he was released from the penitentiary?

A. He came back and worked at our tipple as check-weighman.

Q. How soon after he got out of the penitentiary did he come back to you?

A. To the best of my recollection about two weeks.

Q. Who elects the check-weighman?

A. The miners.

Q. Do you know whether anything had been done relative to electing any check-weighman before he came out of the penitentiary?

A. That was my understanding, that he was to have the position when he got out.

Q. Where did you get that understanding?

A. Well, from his father is one.

Q. Was his father a union miner? A. Yes, sir.

Q. And that is what he was to have, the position of check-weighman again, as soon as he came back from the penitentiary?

2586 A. Yes, sir.

Q. Did he come back when he got out of the penitentiary, and occupy that position?

A. Yes, sir, he occupied that position.

Q. How long did he stay there as check-weighman?

A. Something about like a year, I think.

Q. Now, do you know John Monick? A. Yes, sir.

Q. John Monick, who was in jail on account of this Prairie Creek trouble? A. Yes, sir.

Q. Was he working for you before the Prairie Creek trouble? Was he working for you in 1914?

A. He worked for us in 1914, but I cannot say whether he was working at the time of the trouble or not.

Q. Has he been working for you since 1914?

A. Yes, sir, he has, he is working for the company at the present time.

Q. How long after he came out of jail did he go back to work for you?

A. I don't think he started in until about July 1917.

Q. Do you know whether or not he is now a member of the union? A. He is.

Q. Do you know what local he belongs to? A. 1565.

Q. Do you know whether he is an officer in that local?
A. I cannot say.
Q. Do you know Clint Burris? A. Yes, sir.
Q. Was he working for you in 1914? A. Yes, sir.
Q. Has he been working for you since?
A. To my recollection he worked two days.
Q. When? A. In January or February, 1917.
Q. Do you know Sandy Robinson? A. Yes, sir.
2587 Q. He is the same man that was in jail on account of this Prairie Creek trouble? A. Yes, sir.
Q. Has he been working for you since?
A. Part of the time since January, 1917.
Q. Do you know what local he belongs to? A. 1565.
Q. Midland? A. I think so.
Q. Do you know Oscar Layton? A. Yes, sir.
Q. Is that the same Oscar Layton that was in jail for the Prairie Creek trouble? A. Yes, sir.
Q. Has he been working for you since he came out of jail?
A. For a short time.
Q. When?
A. To the best of my recollection 1916.
Q. All of these men to whom you have referred as working for you since they came out of jail, in order to work for you, did they have to be members of the union?
A. Yes, sir.
Q. Do you know C. E. Pattie? A. Yes, sir.
Q. Have you seen him sign his name? A. Yes, sir.
Q. Do you know his signature when you see it?
A. I think I would.
Q. Will you look at your book there, Book A, check 123, and state whether or not C. E. Pattie was working for you, whether that book shows that he was working for you during the last of July, 1914? A. Yes, sir.
Q. He was? A. He was.
Q. Now, when did you see him write?
A. Well, I see him write often, he comes to our office and draws his pay.
Q. Working for you now? A. Yes, sir.
2588 Q. How long has he been working for you?
A. Since July 1914.
Q. All the time since then?
A. Yes, sir, practically all the time.
Q. Will you please look at this paper, handing the witness Plaintiffs Exhibit 42, and say whether that is in C. E. Pattie's hand writing?
A. Well, I would say to the best of my knowledge and belief that is his signature.

Q. Do you know H. M. Stroup? A. Yes, sir.
Q. Is that the preacher?
A. I think he poses as a preacher.
Q. What is the other Stroup? A. G. S.
Q. H. M. is the preacher? A. Yes, sir.
Q. Do you know his signature when you see it?
A. I don't know whether I would or not.
Q. How long since you seen him write?
A. I think in April 1914, was the last time he worked for our company.
2589 Q. Look in your book and find out when he last worked for you?
A. April—before April 15th, 1914.
Q. Why did he leave, if your books show?
A. Well, I could not say why he left at all.
Q. You do not know why he left?
A. To the best of my recollection at that time we lost several places in our mines,—seven at that time, on account of trouble in the mine and he was laid off and he never went back to work for us any more.
Q. Do you know why he never came back?
A. No, I don't know just exactly why he never came back. I could not say why he didn't come back. I suppose he got employment somewhere else.
Q. Don't wander along on the thing, if you don't know.
A. I don't know why he didn't come back.
Q. Did he owe you any money when he left?

Mr. Warrum: We object to that question.

The Court: The objection is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Would you know whether that is his signature or not, Mr. Boring?
A. No, I could not swear to it.
Q. Do you know that other man whose name is on there?
A. I know Frank Therp.
Q. Would you know his signature? A. No, sir.
Q. You would not know whether it is his signature or not?
A. I would not know that because I don't know that I ever saw him sign his name.

Mr. Drinker: We offer in evidence the exhibits that have been marked Plaintiffs Exhibits 57 and 58.

Mr. Warrum: The defendants separately object to
2590 the introduction in evidence of these exhibits as they do not throw any light on any issue in controversy in this case.

The Court: The objection is overruled, and they will be received.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. McDonough: I suppose, inasmuch as those are original papers, that the right ought to be given to take the originals and leave copies in their place.

Mr. Drinker: He is willing to leave them for a couple of weeks.

The Court: They may be withdrawn later by order of the Court.

Mr. Drinker: You may cross-examine.

Cross-Examination

By Mr. Warrum:

Q. One of these men you testified about served a term in the penitentiary, didn't he,—is that right? A. Yes.

Q. And the other four served terms in jail, three or four of them?

(No answer.)

Q. Well, did any of them serve terms in the penitentiary or in jail?

A. Mr. Menick served a term in jail.

Q. And Sandy Robinson? A. Yes.

Q. And they came back after their terms were out and began work at your mine? A. Yes, sir.

Q. Did you at any time decide to allow them to work because they had been in jail or in prison?

A. No, sir, I did not.

(Witness excused.)

2591 Z. T. Beaty, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. State your name. A. Z. T. Beaty.

Q. Who do you work for, Mr. Beaty?

A. For the Central Coal & Coke Company as agent at Huntington, Arkansas.
Q. At what mine?
A. Mines No. 2, No. 3 and No. 6.
Q. Do you have the same position at those mines that Mr. Boring does at the two mines he testified about? A. Yes.
Q. What was the number of his mines?
A. No. 4 and No. 10.
Q. And you have the three at Huntington? A. Yes.
Q. Have you brought with you the books which correspond to the books he has testified about? A. Yes, sir.
Q. Covering the other two months? A. Yes, sir.
Q. And also the check-off list?
A. Yes, the check-off list is just a printed journal and a part of our pay-roll.

Mr. Drinker: (to stenographer): Mark these please.

Q. Have you just heard Mr. Boring describe the books he brought? A. Yes, sir.
Q. Do these books and check-off lists which you have produced correspondence in all respects as to their condition and effect with the books he produced? A. Yes, sir.
Q. How many men are employed at the mines that you cover?
A. At the present time, or at that time?
Q. At that time, in July 1914.
A. Somewhere between 650 and 700; somewhere along there.
2592 Q. These papers cover the months of April and July of 1914?
A. They cover the whole month of April and the first 15 days of July.
Q. The first 15 days? A. Yes.
Q. Were those mines running on the 6th of April, 1914?
A. I could not say positively to that, but I think not.
Q. You do not know whether they were or not?
A. No, sir, I don't.
Q. Do you know about July 17th?
A. I could not say for sure at that time without looking at my records.
Q. Where are those records?
A. They are in our office.
Q. Who has those records that would show that?
A. I do.

Q. Did you testify in the contempt proceedings in connection with this matter? A. I did not.

Mr. Drinker: You may cross-examine.

Mr. Warrum: No cross-examination.

Mr. Drinker: We offer those two books in evidence.

Mr. Warrum: The defendants would like to severally renew their objection.

The Court: I assume the objection is not made because the foundation questions were not put to this witness?

Mr. Warrum: No, your Honor.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

(Witness excused.)

2593 W. R. EUSTICE, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. Your name is W. R. Eustice? A. Yes, sir.

Q. Known as Bud Eustice? A. Yes, sir.

Q. Were you working for the Bache-Denman Coal Company in the spring of 1914? A. Yes, sir.

Q. What position did you hold on July 17, 1914?

A. I was a bossing, me and Mr. Moore.

Q. Were you under Buster Moore?

A. Yes—well, we were together I don't know whether—I don't know which was foreman, we were both together.

Q. You had charge of the underground work?

A. Yes, sir.

Q. How long had you been there approximately on July 17th, 1914?

A. About three weeks I think, something about three weeks.

Q. Do you remember the day of the big battle, July 17th?

A. Yes.

Q. What occurred the night before and during the day?

A. Well, the night before we was up, a good many of us. Buster Moore was at home and I was staying out and about midnight they cut our lights out, cut the wire and put us in the dark, someone did and they cut our 'phone lines. We

had been looking for trouble all of the time and I had charge of the guns then and I said, "We had better get the guns for we are going to have trouble", and we ran in the office and got the guns. I had mine and I gave the boys a gun apiece.

Q. We have been over this same battle so much, I
2594 will just ask you a few questions.

A. All right.

Q. Do you remember when the first shots were fired early in the morning?

A. Just before day I think, when they fired any just before day I didn't. I stayed up until just before daylight and I was so sleepy I went in and laid down on my cot in the tent and laid my gun down on the ground and I guess I was asleep by the time I hit the bed, and someone said I didn't wake up before they fired.

Q. What happened?

A. They came and woke me up and I asked if any were hurt and they said no, and we stayed around there maybe ten or fifteen minutes and daylight got so we could see and I took Pat Molloy and I forget the other fellow's name and went down the railroad down to the dirt road and went down the dirt road maybe 150 yards in a V kind of shape and there were shells scattered along the road.

Q. How many shells did you pick up?

A. Sixty-six.

Q. What kind of shells were they?

A. There were some big Winchester shells and some shotgun shells and some were thirty-twos.

Q. Where did you find those?

A. About 150 yards of where we was all [att], or maybe 200 yards—not over two hundred yards. Right through the woods it would not be over 150 yards.

Q. Was that about day break?

A. Yes. And we went down at No. 3 to Brown's tent. The women hadn't gotten up, and we asked them if there had been shooting there and they said yes, and we asked
2595 them if anyone got shot and they said no, and we met Mr. Brown.

Q. The man who was on the stand this morning?

A. Yes.

Q. Were you there all the morning through the battle?

A. Yes, sir.

Q. What time did you leave the mine?

A. Well, it was something betwixt half past twelve and 1:00 o'clock.

Q. Did you leave with Buster Moore in the crowd?

A. Yes, I was the last one crossing the fence.
Q. After you got away from the mine a little ways did you look back and see No. 4 burning? A. Yes.
Q. How far did you get?
A. I imagine about a mile over on the hill towards the station where the box cars were standing.
Q. Was No. 4 burning when you left it? A. No, sir.
Q. Do you remember the Sunday night before the battle, and when it was said that some of the Bache-Denman employees went over to Frogtown and shot the place up?
A. On Sunday evening?
Q. Yes. A. Yes, sir.
Q. Do you know anything about any of your employees going over there and doing that?
A. No, sir. We had a few guards out on duty and the rest of them were around the mine. We thought that they were going to charge us and we were fixing for them.
Q. Did you hear the shots from over in Frogtown?
A. Yes, sir, as plain as you want to.

Mr. Hull: You may cross-examine.

Mr. Warrum: No questions.

(Witness excused.)

2596 I. L. COLE, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. State your name. A. I. L. Cole.
Q. Where do you live, Mr. Cole?
A. At Avant, Oklahoma.
Q. Where were you living in 1914?
A. In Hartford from March until September 1914.
Q. In Hartford, Arkansas? A. Yes, sir.
Q. What business were you in there?
A. Watch repairing, in a jewelry shop.
Q. Keep your voice up, Mr. Cole, were you in the jewelry business? A. Yes.
Q. Do you remember the day of the so-called riot April 6th, 1914? A. Yes, sir.
Q. Who, if anyone, came to your store the morning of that day and asked you to close your shop?
A. Jim McNamara.
Q. Do you know who he was and where he worked?

A. Yes, sir, he worked at one of the mines, but I don't know what mine.

Q. You knew him, did you? A. Yes.

Q. What did he say?

A. That all of the rest of the stores were going to close up and he wanted me to close up and march out there with him.

Q. Did you march? A. Yes.

Q. You went out to the school house? A. Yes, sir.

Q. Did you hear any speeches made out there?

A. Well, I know who made them but I didn't hear any of them, I was not close enough to hear any of them.

2597 Q. Who made the speeches?

A. There was some lady named Hogan, or something like that and Jim Slankard talked a little.

Q. How many people were there at the school house?

A. I guess about twelve or fifteen hundred.

Q. Did you go down to the mines when the crowd went down? A. Yes, sir.

Q. Did you see some trouble there at the ropes between one of the guards and the crowd? A. I saw part of it.

Q. Did you see the big guard Barnes hit over the head?

A. Yes, sir.

Q. Did you see him hit? A. Yes.

Q. Who? A. Sandy Robinson.

Q. Was Barnes pointing his gun at any one or did he points his gun at anyone that you saw?

A. No, not that I seen.

Q. Did you see a banner put on the tipple?

A. I don't remember whether I seen it put on or not.

Q. Did you see it after it was on? A. Yes.

Q. What did the banner say?

A. Something about it was a union man's country.

Q. Do you remember the occasion of seeing a man by the name of W. H. Argo beaten up in Hartford by Jim McNamara? A. Yes, sir.

Q. Where was it?

A. In front of that restaurant, just as we came out of the restaurant.

Q. Burson's restaurant? A. Yes.

Q. State what you saw there.

A. I was standing across the street when he came out and I seen him hit this Argo and by the time I got over there Argo was down on the sidewalk next to the building.

2598 Q. Now, coming down to July 17th, 1914, the day of the battle out at Prairie Creek, state whether or not you were in Hartford the night before that battle.

A. Yes.
Q. Did you see Jim McNamara on the street that night?
A. Yes, sir.
Q. State what you saw in that connection.
A. He was in a picture show for awhile and then came out and down to the hardware store.
Q. Was that Smoots Hardware Store?
A. It is right next to Harris'.
Q. Is that the Hartford hardware store?
A. I don't know. It is on the same side of the street the hotel is a couple of doors above there.
Q. State what you saw at the Hardware store.
A. I seen Jim and Conroy,—
Q. Who is Conroy?
A. Mayor of Hartford, and they were keeping track of the ammunition they took out of there.
Q. McNamara and Conroy? A. Yes.
Q. Who was taking the ammunition? A. I don't know.
Q. Were men going in and out? A. Yes, sir.
Q. And taking ammunition? A. Yes, sir.
Q. On the morning of the battle did you go out to No. 4?
A. Yes, sir.
Q. How far did you go?
A. Well, I don't know just how close it was. It was as close as I wanted to go.
Q. Did you go right to where the shooting was going on?
A. I guess I was about 300 yards from there.
Q. Do you know whether you got as far as Prairie Creek —do you know where Prairie Creek village was? A. Yes.
Q. Did you get into Prairie Creek village?
2599 A. Well, I was right on the edge of it. I don't think I was right in it.
Q. Did you see Jim McNamara that morning?
A. I saw him about 11:00 o'clock, I guess it was.
Q. Where was he? A. He was coming back with a gun.
Q. He was coming back from where?
A. He was back in where the rest of them was shooting and he came back down to where a dozen or two of the men were sitting.
Q. He came back to where you were watching the fight?
A. Yes, sir.

Mr. Hull: You may cross-examine.

Mr. Covington: No cross-examination.

(Witness excused.)

2600 J. F. RAUSER, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name. A. J. F. Rauser.

Q. Where do you live, Mr. Rauser?

A. Down in Clarksville.

Q. Clarksville, Arkansas? A. Yes, sir.

Q. What is your occupation? A. Farmer.

Q. Do you remember the time when there was trouble over at Prairie Creek on July 17th, 1914? A. Yes.

Q. Were you some relation to John Baskins?

A. Yes, sir, brother-in-law.

Q. Did you and Charles Baskins, a brother of John Baskins, go over to Prairie Creek on Saturday July 18th to look for the body of John Baskins? A. Yes sir.

Q. State where you went and with whom you went and what occurred?

A. I lived north of Hartman then, and my father-in-law wanted me to go with Charles and get the body and he came up on the slacker that morning, Saturday morning, and some folks told us it was dangerous to go over there, and we met Tom King.

Q. Who was Tom King?

A. A union organizer, and told us he would write a paper to take us over there safe and he introduced us to Sam Wooton.

Q. Who was he?

A. He was district board officer at that time.

Q. Of what? A. Of the union.

Q. Tom King introduced you to Sam Wooton here at Fort Smith, did he?

A. On the train going over there.

2601 Q. And you went to Midland with Sam Wooton?

A. Yes.

Q. What happened after you got to Midland?

A. We hired a hack and Sam Wooton drove the hack down to Prairie Creek.

Q. As you were leaving did Sam Wooton say anything to the City Marshal of the town?

A. Yes, he wanted him to follow us along with more men and guns. And we came on down there.

Q. When you got to Prairie Creek what occurred? You went down there with Sam Wooton? A. Yes.

Q. What did Sam Wooton do when you got to the school house?

A. He stopped the hack and there was a few men in front of us, about 50 yards, and he said for us to hold our tongues and let him do the talking, and he went to these men and talked to them.

Q. Where were these men, at the school house?

A. I don't recollect whether they were right at the school house or not. It was getting dark and I was not acquainted down there. But he talked with them and he brought them up to the hack, and we all talked and he made us acquainted with the men.

Q. To whom did he introduce you?

A. Frank Scofield was one and the others name I forget.

Q. Did you know Scofield was secretary of the union?

A. I dont' know whether he is secretary or not.

Q. What did Scofield say?

A. That there was no one killed he knew of, and if there were he would have them hunted for. And he said to go back to Fort Smith and wait until morning, and get the man that could inform him.

Q. Did you go back to Midland?

A. Yes, we came back from Prairie Creek back to Midland and stayed there that night.

2602 Q. On the way back to Midland did you meet the City Marshal from Midland coming down with a posse of men? A. Yes, sir, we met him as we came back.

Q. Where did you spend Saturday night?

A. At Midland.

Q. In the hotel? A. Yes.

Q. Did you hear any disturbance or commotion that night?

A. We heard some right before we went to bed. They were passing there, and some had guns under their arms, but we went to bed and didn't know nothing about it, and the next morning and the lady at the hotel told us there was 15—

Q. (Interrupting). You needn't state that, never mind what she told you. Was Charles Baskins with you that night?

A. Yes.

Q. He was the brother of John Baskins? A. Yes, sir.

Mr. Hull: That is all.

Cross-Examination

By Mr. Warrum:

Q. You are acquainted with the miners' officers in the district here, are you? A. In the district here?

Q. Yes. A. No, sir.

Q. You say that Sam Wooton was district board officer.

A. Yes. Tom King introduced us to Sam Wooton, that is as far as I know.

Q. Sam Wooton was district board officer? A. Yes.
Q. He was introduced to you? A. Yes.
Q. And Tom King was district officer?
A. Yes, a union organizer.

Mr. Warrum: That is all.

Recross Examination

By Mr. Hull:

Q. Did you know Tom King yourself ?

2603 A. No, sir, not until Charles Baskins made me acquainted with him.

Q. He knew him? A. Yes.

(Witness excused.)

2604 CHARLES BASKINS, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name. A. Charles Baskins.
Q. Where do you live? A. I live at Spadra, Oklahoma.
Q. What is your business?
A. Coal digger and farmer.
Q. Are you a brother of John Baskins, who was killed in July, 1914? A. Yes, sir.
Q. And a brother-in-law of the last witness?
A. Yes, sir.
Q. Did you on Saturday, the day after the battle down there, go down with Mr. Rauser from Hartman to Prairie Creek? A. Yes, sir.
Q. To look after the body of your brother? A. Yes.
Q. With whom did you go on the train from Hartman to Fort Smith?
A. Mr. Rauser was going with me and when I got on the train at Montana, Tom King was on.
Q. Did you know Tom King? A. Yes.
Q. What position did he hold, if any, in the union?
A. I think he was organizer.
Q. Of the district? A. Yes.
Q. Did you meet Sam Wooton during the day?
A. Yes, I met him down here at Bonanza some place.
Q. Who introduced you to him? A. Tom King.
Q. And you went to Midland with Sam Wooton, did you?
A. Yes.
Q. What did you hear as you left Midland? Did Sam Wooton say something to a city officer there?

A. I don't understand that question.

2605 Q. As you were leaving Midland did Sam Wooton say something to some of the officers of the town?

A. He asked him to go with him and he said "All right, wait until I get my gun", that is the way I understood, and he started to go with us and said he would wait and get a buggy of his own.

Q. You went down to the school house at Prairie Creek, did you? A. Yes, sir.

Q. That was near Mine 4? A. Yes, sir.

Q. When you got there what happened?

A. Well, there wasn't much of anything any more than Sam Wooton called several people around him and inquired if they knew anything of the man that was hunting my brother.

Q. Did he introduce you to anyone in the crowd at the school house?

A. Yes, Mr. Rauser called his name Frank Scofield, is the only one I remember.

Q. Do you know whether he was secretary of the local?

A. I don't know.

Q. He did not say? A. No.

Q. What did he say to you about the body of your brother, if anything?

A. He didn't say anything any more than he didn't believe there was any one killed; that is the way he told me, that he didn't believe there was anyone killed; and if there was, he was willing to help all he could to find him.

Q. Were you then at the school house? A. Yes.

Q. You did not go up the ravine to the log cabin?

A. Not that day.

Q. Did Sam Wooton say anything about where he was the day before?

A. Well, no. He showed us a tree where he was standing when the trouble was going on. That was a mile this

2606 side and he said he was watching the road to keep people from going in.

A. He showed you the tree where he was at the battle?

A. Yes. He said he was guarding one end of the road and another man another. That is, each side of No. 4 Mine.

Q. Did he say who the other man was?

A. No, he didn't say.

Q. Did he tell you anything about the battle what had happened there? A. No that is all.

Q. Did you go back to Midland that night? A. Yes, sir.

Q. Did you spend the night in the hotel? A. Yes.

Q. What happened if anything, that night when you were upstairs in the hotel?

A. There was right smart excitement. There was some came in there that was not acquainted with me and I was telling them I was union and they would not believe it.

Q. Were you a union man at that time?

A. Yes. And this man Wooton left me in care of Chalk Orme who was proprietor of the hotel.

Q. What did you hear, if anything, said by the crowd outside under your window?

A. I didn't hear them say. They were talking there about they would not do that. They seemed to have confidence in Tom King and Sam Wooton; that is the way I understood the conversation. I don't know just what it meant. I could not say, but I had my opinion about it.

Q. Did you some days later go down again to Prairie Creek to look for the body of your brother? A. Yes, sir.

Q. When was that? A. On Sunday after that Saturday.

Q. Where did you go then?

A. We went to Midland and out in a ridge to Prairie Creek.

2607 Q. Did you go up back of the school house?

A. Yes, sir. ,

Q. State what you did? A. We found that spot—

Mr. Warrum: If the Court please unless some of the defendants were accompanying them when he went to find the body we object to that.

The Court: There seems to be some controversy as to whether or not there was some one killed and I presume that goes to the character of the [trasnactions] down there, doesn't it?

Mr. Warrum: I thought it was a collateral matter and objected to it for that reason, but if the Court thinks differently I withdraw the objection.

The Court: There seems to be some controversy as to whether these people knew a man was killed there.

Q. Did you go up the hollow and [found] where the log cabin had been burned? A. Yes.

Q. Did you find anything in the ashes of the log cabin?

A. We found a few bones and the eyes out of some shoes that the strings go through, those brass things and buttons off of some overalls.

Mr. Hull: You may cross-examine.

Mr. Covington: No questions.

(Witness excused.)

2608 W. J. SMITH, called as a witness in behalf of the plaintiffs, and having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your name. A. W. J. Smith.

Q. Where do you live?

A. I live at Clayton, Oklahoma.

Q. What is your business? A. Farming.

Q. Did you live in Midland?

A. I ain't living at Clayton now. I live at McCawber, Oklahoma, now.

Q. Did you live in Midland or near there in July 1914?

A. Yes.

Q. Do you remember the battle down there July 17th, 1914? A. Yes.

Q. What did you see in Midland the morning of that fight?

A. I just seen the people rustling and starting about first one way and then another.

Q. Did you see any men leave Midland with guns?

A. I saw them go down the road below Midland a little ways.

Q. In what direction? A. Going towards No. 4.

Q. Did you see a man by the name of Fitzgerald that morning? A. Yes.

Q. Who was Fitzgerald?

A. He was the man that run a hotel there.

Q. What did you see him doing?

A. I seen him on a horse going out across the street.

Q. Going towards No. 4? A. Yes.

Q. What did he have on the horse?

A. I don't know—he had a couple of sacks on the horse and seemed to be pretty well loaded. I don't know what was in them, but the remark was made by two or three there that it was the second trip he made.

2609 Q. Who were the men that made the remarks, were they union miners or not?

A. I don't know, they were supposed to be.

Q. Never mind what they were supposed to be. Did you see Fitzgerald make more than one trip from Midland this morning with that horse?

A. I am not positive I saw him make two, but I know he made one.

Q. Did you see Jim Lee that morning? A. Yes.
Q. What, if anything, did you see him do?
A. Well, I didn't see him doing anything in particular.
Q. Did he have a gun? A. No, not that I seen.
Q. Do you know whether the stores in Midland would sell to these employees of the Bache-Denman Company?
A. I never seen them try it but the talk was all over by everybody they wouldn't do it.
Q. Was there any one man that was known as a man that would sell them?
A. I heard one or two men say that no one would sell to them but Buck Tharel and they was going to try to get him to quit it.

Mr. Hull: That is all.

Cross-Examination.

By Mr. Covington:
Q. How old a man is Mr. Fitzgerald? A. How old?
Q. Yes, he is an old man, isn't he?
A. He is tolerable old.
Q. He is about 70, isn't he?
A. He is older than I am. I have heard him tell his age, but I don't remember.

Mr. Covington: That is all.

Witness excused.)

2610 MRS. SABITHA SMITH, called as a witness on behalf of the plaintiffs, and having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. State your full name. A. Sabitha Smith.
Q. Are you the wife of the last witness? A. Yes.
Q. You lived near Midland in 1914? A. Yes, sir.
Q. What did you see of the morning of the day of the battle of July 17th, 1914?
A. I saw what they called the unions going down the road with their guns on their shoulders.
Q. Whom did you see?
A. Well, I have got their names here. I can't remember all their names just by telling it, but I have them written down here.
Q. See if you can remember one man that left his gun at your house? A. Yes, sir, I remember Jim Law.
Q. Do you know where he worked?

A. He worked at No. 4.

Q. What did he say when he left? Either when he left the gun or when he came after it?

A. Well he brought the gun there and told me—he said, "I want to leave my gun here" and I said, "No, I don't want you to," and he said "Why?" And I said, "If you do, take the shells out of your gun and put it away yourself." And he put it away himself.

Q. When did he come back after the gun?

A. He never came back at all.

Q. Did he ever say anything to you about what had happened that day?

A. Why, he said they had done up the work in general down there and he didn't think there would be any more hereafter scabs.

2611 Q. Who else did you see that morning that you can remember without looking at anything?

A. A young fellow by the name of Picking Tillery.

Q. Do you know where he worked?

A. He worked at No. 4 part of the time.

Q. Did you know a man by the name of Benny Morfew?

A. Yes, a young man.

Q. Did you know where he worked? A. At No. 4.

Q. At No. 4 Prairie Creek?

A. It is the mine down there they call No. 4; I don't know whether it is No. 4 Prairie Creek or No. 4 Mine. They just call it No. 4.

Q. He had worked there before they went on the non-union basis, had he?

A. I could not tell whether he had or not. Anyway, he worked at No. 4 mine down towards Prairie Creek.

Q. What did he say to you during the day some time?

A. Well, he came around back there—I am well acquainted with him. He came around back to talk to me and I asked him what was the matter, and he said they had Earl Sylesberry caught. And I said, "What are they going to do with him?" And he said, "I guess they are going to kill him," that they had him tied up by the hands.

Q. Did Picking Tillery have a gun that day?

A. Yes. He is a fellow down towards Prairie Creek.

Mr. Hull: That is all.

Mr. Covington: No questions.

(Witness excused.)

2612 MISS MILLIE SMITH, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your name please. A. Millie Smith.

Q. You are the daughter of Mr. and Mrs. Smith who have just testified? A. Yes.

Q. You lived in Midland in 1914? A. Yes.

Q. Do you remember the day of the big battle at Prairie Creek, No. 4? A. Yes.

Q. Did you know Denny Morfew? A. Yes.

Q. Did you know where he worked? A. At No. 4,

Q. No. 4 Prairie Creek?

A. I don't know just exactly whether it is No. 4 Prairie Creek or not.

Q. Do you know whether he was working there before it went on a non-union basis?

A. Well, he was working there. I don't know just exactly whether it was before they quit or not.

Q. Do you know whether he was a union miner?

A. Yes, he was.

Q. Did you see him that morning of the battle?

A. Well, I never saw him until about 10:00 or 11:00 o'clock.

Q. Did he come up to where you were then?

A. He come up to our house.

Q. What did he say, if anything? What did you hear him say? A. I was not exactly right where he was.

Q. You did not hear what he said? A. No.

Q. Did you know a man by the name of Fitzgerald?

A. I don't know him exactly, but I saw him.

2613 Q. Did you know who he was? A. Yes.

Q. Did you see him start towards Prairie Creek on a horse that morning? A. Yes.

Q. About what time was that?

A. Between 10:00 and 11:00 o'clock.

Q. Was there anything on the horse?

A. Yes, sir, there was two sacks on it.

Q. Did you see him make one or two trips down to Prairie Creek? A. I just seen him make one trip.

Q. Do you know Jim Lee? A. Yes, sir.

Q. Did you see him that morning?

A. Yes, I saw him about 12:00 o'clock—between 12:00 and 1:00 o'clock.

Q. Do you know.....Taylor? A. Yes.

Q. Did you see him? A. Yes.

Q. Where was he going when you saw him?
A. He was going down the track towards No. 4 mine.
Q. Did he have a gun? A. Yes, sir.
Q. Do you remember any others there going towards Prairie Creek from Midland that morning with guns.
A. I saw their faces, but I don't remember their names.
Q. About how many men did you see leave Midland that you saw going towards Prairie Creek with guns?
A. Eight or ten or twelve.

Mr. Hull: That is all.

Cross-Examination

By Mr. Warrum:
Q. How old are you Miss Smith?
A. I will be 17 my next birthday.
Q. Do you know Denny Morfew very well?
A. Yes, sir. He went to school when I did.
Q. Did he come to your house more than once that day?
2614 A. Well he came to our house one time that evening while I was in. Of course I was not there all the time.
Q. Was it 10:00 or 11:00 o'clock in the evening or morning you saw him? A. I saw him in the evening.
Q. After dark?
A. No, sir, about three or four o'clock.

(Witness excused.)

2615 J. B. Atkisson, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. Your name is J. B. Atkisson? A. Yes.
Q. Where do you live now?
A. In Rogers, Benton County.
Q. What is your business?
A. Deputy Sheriff of the County.
Q. Were you a United States Deputy Marshal in October 1914 under marshal Mayes of the Western District of Arkansas? A. No, I was under Marshal Parker.
Q. When were you sent down to Prairie Creek?
A. I think it was October 27th.
Q. With whom were you sent?
A. Me and Mr. Cole went down there. J. D. Cole, I think his name was.
Q. He also was a Deputy? A. Yes, sir.

Q. State what occurred on the night of October 28th?

Mr. Warrum: The defendants will object separately to this testimony because it relates to transactions which occurred after the institution of the suit.

The Court: I am sure I can not tell what the character of the testimony is. It will make some difference what it is. What is the question?

Mr. Hull: (Reading.) "State what occurred on the night of October 28th?" I don't know whether this has been introduced before, but this night the deputies were shot at on the property and more property was burned.

The Court: The same property?

Mr. Hull: Yes. Of course we don't claim damages for this.

2616 The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, then and there duly excepted and still except.

Q. State what occurred on October 28th.
A. On October 28th, about 12:00 o'clock there was a good many men came there.
Q. Had you gotten some warning of trouble coming that afternoon? A. Yes.
Q. Who had given the warning to you?
A. I have forgotten their names. They were running a union mine down below No. 4 they said.
Q. Mike Weston? A. Yes.
Q. Did you hear what he said?
A. No, I saw him talking to John Shaleen.
Q. What happened at 12:00 o'clock that night?
A. They shot up the camp.
Q. Had you made preparations as well as you could against this attack? A. Yes, sir.
Q. What had you done to defend that house where you were staying?
A. We hauled up some boiler plate steel and some iron from the mines and put it in one of the rooms, and around the house.
Q. About how many men would you say were in the crowd that attacked you that night, from the shots fired?
A. I judge 300 or 400, maybe more, I judge from the shots fired.
Q. You did not see any of the attacking party?

A. Nothing but the forms of some of them as we got out of the house.

Q. How many were in the house with you that night?

A. Seven or eight, I disremember which.

Q. There were two deputy marshals? A. Yes, sir.

2617 Q. You and Mr. Cole? A. Yes.

Q. Had there been a third deputy there during the day? A. Yes.

Q. What became of him?

A. He got scared up and quit us about sundown in the evening.

Q. Where did he go?

A. He said he was going to Hartford and come into Fort Smith.

Q. What was his name? A. Sid Johnson.

Q. What kind of a looking man was he?

A. He was a great big fellow and said he had been chief of police of Fort Smith, I think.

Q. You left the house then? You escaped from the house while it was under fire? A. Yes, sir.

Q. Where did you go?

A. We went up to the Fan House, out on the mountain.

Q. Did you look back and see any fire? A. Yes.

Q. What did you see burning?

A. We saw the houses down from where we were at burning. It looked like several were burning.

Q. Do you remember what the house was called where you stayed that night?

A. No, sir, I was a stranger down in that country at that time. I heard what it was [calld] but have forgot.

Q. Do you know whether it was what was called the Bent House?

A. It might have been, I could not say.

Q. Were you in charge of the marshals down there,—of the deputy marshals that were sent down there, during the entire fall? A. Yes, sir.

Q. Even after the soldiers got there in November?

A. Yes, sir.

Q. Did you, on various occasions make attempts to buy goods and supplies from the stores in Midland?

A. Yes, sir.

2618 Q. What success did you meet with?

A. I was refused. There was only one place in Midland we could get anything from.

Q. What store was that? A. Buck Theral's store.

Mr. Hull: That is all.

Mr. Warrum: No questions.

(Witness excused.)

2619 HUGH R. RANKIN, called as a witness on behalf of the plaintiffs, and having been duly sworn testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your name? A. H. R. Rankin.

Q. Talk up, so that we can hear you. If you are out playing with the boys you could make them hear. How old are you? A. I am 17.

Q. What is your father's name? A. J. B. Rankin.

Q. Did you live with your father and mother somewhere near Prairie Creek Mine No. 4 on July 17th, 1916?

A. Yes, sir.

Q. State what you remember about someone coming to your house early that morning and telling you to leave?

A. Well, one morning about 7:00 o'clock, there was ..... Daniels came there.

Q. Do you know where he worked?

A. He worked at No. 4.

Q. No. 4 what? A. No. 4 Prairie Creek.

Q. Did he work there before they went on a non-union basis? A. Yes, sir.

Q. What did he say to you?

A. He told us to get out of camp that there was going to be trouble that morning.

Q. Do you remember the night of October 28, when some buildings were burned down there at No. 4 camp?

A. Yes, sir.

Q. Do you remember of your father leaving the house that night? A. Yes, sir.

Q. What did he have with him when he left? A. A gun.

Q. What did he say when he went out?

A. Well, he told us that we need not look for him

2620 back until—

Q. I can't hear you.

A. He told us that we needn't look for him back until we seen the camp burned up.

Q. What camp did he say? A. No. 3.

Q. How soon after that did you see No. 3 camp burning?

A. It was about an hour after that, to the best I can remember.

Mr. Hull: That is all.

Cross-Examination

By Mr. Covington:

Q. Where did you live? A. At Frogtown.
Q. How far from the mine?
A. Which one, No. 3 mine?
Q. No. 4. A. Oh, we lived right at a mile.
Q. How far? A. Right at a mile.
Q. And you say your father left your home that night?
A. Yes, sir.
Q. And he said you need not look for him back until you saw the camp burning? A. Yes.
Q. Who else was there? A. At the house?
Q. Yes, at the house.
A. Just me and mamma and papa.
Q. Just you and your mother and father? A. Yes, sir.
Q. Is your mother living?
A. Yes, she is sitting right back there (indicating).
Q. Where is your father?
A. I don't know where he is at.
Q. When did you see him last?
A. It has been about three months.
Q. How long?
A. Three months. It has been going on to three months.
Q. Was he then living with you down there up to three months ago?
A. We moved to Hartford, and he left us there at Hartford, about three months ago, I guess.
2621 Q. What time of night was that?
A. It must have been somewhere along at 11:00 o'clock?
Q. 11:00 o'clock? A. Yes, sir.
Q. He left alone, did he?
A. Yes, he went up by hisself.

(Witness excused.)

Mr. Hull: I assume, that Mrs. Rankin will not be allowed to testify under the ruling made by the Court the other day. She is in the Court room. I just want to make that statement.

The Court: Is her husband a defendant here?

Mr. Hull: He has been a member of the union at times, but we have not made proof as to his connection with the union.

The Court: If he is a defendant here, I will sustain the objection. You can make the offer if you desire.

The rule will not obtain unless he is a party to the action.

Mr. Hull: It is on that theory we offer this evidence.

2622 PAUL CARROLL HAMILTON, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Paul Carroll Hamilton.

Q. Where do you live? A. Hartford.

Q. You are the son of the druggist Hamilton there?

A. No, sir, son of the dry goods merchant.

Q. What is his name? A. W. J.

Q. Mr. Hamilton, I believe you were at the Hartford station on the night of October 31st, 1914, when there was some trouble there at the station? A. Yes, sir.

Q. Will you describe what you saw that night?

A. I got down to the station as the train was coming in, I went down for the purpose of mailing a letter.

Q. What time was that?

A. Some time about six or seven o'clock; 6:15, I believe. I saw a crowd at the station, and walked toward the crowd and saw,—

Mr. Warrum: It is almost impossible to hear the witness.

The Court: I cannot even hear him.

Mr. Warrum: The defendants separately object to the introduction of evidence regarding any accident which occurred after the institution of the suit.

The Court: Read the question.

(Question read by the stenographer.)

The Court: You are supposed to couple with that October.

Mr. Hull: October the 31st. It will develop that this
2623 was the time when the United States marshal was held up by some masked and armed men, and some prisoners taken away from him.

The Court: Were these men in any way connected with this suit?

Mr. Hull: The marshal had gone down there to serve warrants on these defendants, and there was a rescue of those prisoners, for which they were afterwards indicted.

The Court: Will you identify these persons as part of these defendants?

Mr. Hull: Certainly as conspirators in this conspiracy, and three of them, I think, were union men, and have pleaded guilty in this court before your Honor in January, 1915; they were indicted on a Federal indictment.

The Court: Yes, sir, but those indictments have no connection with this conspiracy. That doesn't necessarily follow that they were conspirators.

Mr. Hull: No, your Honor, but that rescuing of the conspirators who had been indicted as participants in this riot on July 17th,—

The Court: I don't think that is competent. Upon what branch of the case do you think it is competent?

Mr. Hull: Simply as showing the continuing conspiracy, when these men were arrested doing what we charged they did on July 17th, and were arrested under federal bench warrants, these men, still participating in the conspiracy, and three or four union men, at the point of guns, took the prisoners away from the United States Marshal.

The Court: I don't think that is competent in a civil action for damages. I think you have gone the limit when
2624 you have shown the conspiracy, and the damage, and possibly that conspiracy did continue, on the theory that the conspiracy did not end with the burning of this property, and as I suggested once before, if the burning and destruction of this property was simply an incident in the conspiracy, and to the accomplishment of its end, doubtless you would not be held like a conspiracy that stopped short, and cut off with the destruction of this property, but it is alleged in this case that the conspiracy was continued, which could not legitimately be shown by the interference with these officers, and the arrest of these men.

Mr. Hull: It was this very event which we are trying to introduce now which caused the calling of a special grand jury within three days, and this whole thing was thrown into the criminal court, on this incident.

The Court: It might be criminal, but not competent in an action for damages, for mines destroyed before that time.

Mr. Warrum: And that is one reason that we object, because it is collateral.

The Court: I think this is going too far. There is only one theory that you can go beyond this on. This is simply the court's theory, and I am willing to give you a hearing on it, if there is any possible, authority, but the court's opinion is that in a conspiracy, when you have proven the accomplishment of the purpose, the completion of the conspiracy, that it stops, unless there is an admission afterwards, and that is only to the co-conspirators themselves, but I think, as the plaintiffs have alleged their cause of action, they clearly allege a
2625 conspiracy covering a wide area of country, and extending over a long period of time, and that in the March and progress and development and aims of that conspiracy, this mine, this property, got in its way, and was destroyed, and this conspiracy that was formed marched on with the same purpose, and with the same intent, thereby reinforcing any proof that might be produced as to the extent and purpose as outlined in the testimony of events preceding the destruction of the property. I mean to make myself clear, because I think this case is an exception to the rule that applies to a conspiracy with an end, because it is complained of here and this conspiracy has been alleged as a continuing one, but I think that in the application of that rule, when it comes to matters outside of things directly connected with the destruction of the property, then it would be necessary to keep within the bounds of testimony legitimately and reasonably showing the march of this conspiracy, in its accomplishment of its purpose, as theretofore alleged. And I don't think that the simple fact that after this property was destroyed, that persons who were arrested, even in connection with its destruction, and the fact that the officers were interferred with, goes to show the furtherance of that conspiarcy.

Mr. McDonough: If the same defendants themselves go and release the men charged with the act, it does look to me like it is a continuation of the original conspiracy; because they release the men charged with this crime here.

2626 Mr. Drinker: If these people pleaded guilty to the same thing,—

The Court: I cannot hear you all. I cannot hear all three of you at the same thing. We have to get through with it same time, even if we are wrong.

Mr. Hull: I understand your Honor to rule,—

The Court: Now, I don't wan't that, I want to figure a minute on this, and get your viewpoint.

Mr. Hull: I might say that Sandy Robinson was one of the persons released at this time.

Mr. Warrum: I don't want to be continually interrupting counsel, or interrupting the court,—

The Court: No, I want you to.

Mr. Warrum: But, it seems to me, setting here thinking about this matter, that it would be extraordinary to [drawn] an inference from the fact that a prisoner was released, that they might urge that the prisoners were released by members of this conspiracy, as they allege; they allege that they were masked men.

The Court: Just keep your feet, Mr. Warrum, because I want to hear from you. You expect to show that these men were charged, and warrants issued, with the burning and destruction of this property, do you? That is, interfering with the possession of the marshal, that was the charge?

Mr. Hull: The warrant was a bench warrant issued by the Commissioner, on the affidavit of a government special agent, charging the destruction of these mines in a conspiracy to obstruct justice, under Section 37 of the Penal Act.

The Court: Yes, I know. Now then, you propose to show that this warrant was issued, and placed in the hands
2627 of an officer; that he went down and took possession of these men. Now, you propose to show further that after he had taken possession of them, that they were released by force?

Mr. Hull: Yes, sir.

The Court: Do you have any proof of who the men were?

Mr. Hull: Yes, sir, even the masked man.

The Court: Can you identify a reasonable number of them?

Mr. Hull: Yes, your Honor.

The Court: The objection will be overruled; I am assuming that that identification goes to the defendants.

Mr. Hull: By defendants, that includes the members of the union?

The Court: It certainly does, and by the way, I am reading your statute, and the following persons shall be incompetent to testify: "Husband and wife for or against each other, or

concerning any communication made by one to the other during marriage, whether called as witnesses while that relation subsists or otherwise."

Mr. Drinker: There is an exception where the husband has left his wife,—there is in our state.

The Court: There don't seem to be here.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

By Mr. Hull:

Q. Now, Mr. Hamilton, you will have to talk louder so that we can all hear,—now, please try. What did you see at the station?

A. I saw a bunch or a crowd of men at the station, when the train pulled in I walked up quite close to the crowd, and I same some men board the train, and my [curiousity] was aroused and I got on the train right behind them. I saw
2628 them march up the aisle, and saw them march the men back that they said were in the custody of the United States Marshal. I didn't know them at the time, but they said they were government men.

Q. Whom did you see in this crowd that got on the train and took those men off, that you recognized?

A. John Champion was the only man I recognized.

Q. You saw a man with a mask? A. Yes, sir.

Q. Could you say from seeing them there, by his face, did you draw any conclusion at that time as to who it was?

A. No, sir, I cannot say that I did; I didn't see his face and couldn't state under oath who he was.

Q. Did you see any of the others who went on the train?

A. No, sir; there might have perhaps been some more, but Champion was the only one that I recognized as a party.

Q. Did Champion have a gun? A. I don't remember.

Q. Did the man with a mask have a gun?

A. There was a gun in the crowd, but I don't remember who had it.

Q. You say in the crowd, the crowd that got on the train?

A. Yes, sir.

Q. And whom did they take off of the train?

A. I disremember who the man was, Nein was one, I believe; they had them as prisoners.

Q. And did you see Sandy Robinson there at that time?

A. No, sir, I don't remember.

Mr. Hull: Of course, this masked man, it is unfortunate for this particular witness that he did not know who he was,

but of course we will identify the four men before we are through.

The Court: With that understanding, you may proceed.

Mr. Hull: It may be understood that this goes out unless he is identified.

2629

That is all.

Mr. Covington: No questions.

Witness excused.

2630 CHARLES DALTON, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Charles Dalton.
Q. What is your business? A. Carpenter.
Q. What was your business in 1914? A. Carpenter.
Q. You were also reporting for the Little Rock Gazette?
A. That was on the side.
Q. You lived in Hartford? A. Yes, sir.
Q. How long had you lived there?
A. I have lived there 18 years.
Q. Do you remember the day of the big battle there at Prairie Creek? A. Oh, yes.

The Court: I think, gentlemen, before you start in with this witness,—I had forgotten, and it is time to take the usual five minutes recreation.

(A recess was here taken of five minutes.)

By Mr. Hull:

Q. Mr. Dalton, you say you remember the day of the big battle out there? A. Yes, sir.
Q. Did you go out to No. 4 that morning?
A. I think it was,—no, I didnt go out in the morning; I don't think so, it must have been about twelve o'clock when I went out.
Q. With whom did you go? A. I went with Lingo.
Q. Is that Tom Lingo?
A. Yes, sir, the insurance man.
Q. You went in his buggy?
A. Yes, sir, I went in his buggy.

2631 Q. Did you meet any men coming in toward Hartford on your way out to No. 4?

A. Oh, yes, they were scattered all along, these squads of men.

Q. And did you notice any identifying marks that they had when they had any?

A. No,—I dont think I noticed any identifying marks on those we met.

Q. Did you see any men with white handkerchiefs at all out there?

A. Yes, sir, I saw some men with white handkerchiefs.

Q. Where were they?

A. Around the arm,—at Frogtown.

Q. That was at Frogtown? A. Yes, sir.

Q. How far did you get toward the scene of the trouble?

A. We got to Frogtown, that must be three quarters of a mile from No. 4, and at that time Mammoth, just over to the left, was burning.

Q. Mammoth Vein No. 1?

A. No 4,—no, No. 1, yes.

Q. Now, how many people were there around Mammoth Vein No. 1?

A. There is a ridge that overlooks the mine, and it was crowded. Oh, three or four or five hundred people; a tremendous big crowd there.

Q. Did you go on beyond Frogtown that trip?

A. No, sir, we didnt go beyond, we went to look at the fire, and I took some notes, and we went back in.

Q. Did you recognize anyone that you knew out there on that trip?

A. Oh, I recognized a good many, but I have forgotten who they were.

Q. You could not state now the names of any men that you remember seeing out at Frogtown about noon on the day of the battle?

A. Well, one man came out, as far as I can remember, stepped out and [waived] at us, and motioned at us, and
2632 he asked where we were going, and we said we thought we would go to No. 4, and my hearing is a little bad at times, and I didnt hear what he said exactly, but Lingo stopped and turned to me and said, "Well, we will go over and see the Mammoth Vein", it was burning, we could see over the hill the smoke and flames, but we couldnt see the mine itself, and we turned and went over, and I think I remember that man?

Q. Who was it? A. Jeff Mealer.

Q. Do you know where he worked?

A. At No. 4 Central.

Q. That is in Hartford? A. Yes, sir.
Q. Did you go back again that day later in Mr. Lingo's car? A. Yes, sir, later in the evening.
Q. What did you see out there then?
A. Well, it was practically deserted. There were a few sight seers around but there was nothing left to see but a smoldering mass of debris.
Q. Where was that?
A. At No. 4 Prairie Creek, and everything that was made of wood had been burned. And the pit mouth, the cribbing of the pit mouth, was in fire, but we got pretty close to the pit mouth and looked, and I remember there were two or three sight seers around there, and some children, and I wanted them to keep away from there, it was liable to crumble and fall in.
Q. Do you remember seeing anyone there at that time that you recognized?
A. No, it was practically deserted, they had all come in by that time.
Q. Now, Mr. Dalton, I will ask you if you remember some time about along in November of seeing on the trees, or on some posts in Hartford, a sign posted up there that referred to this trouble
A. Which November?
Q. In November, 1914, the November following this date?

2633 Mr. Warrum: The defendants severally renew their objection to this testimony, as it was after the suit was instituted.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. No, but there was one in 1916.
Q. How is that?
A. There was a small placard put up in 1916.
Q. That was last year? A. Yes, sir.
Q. Do you know what that placard said?

Mr. Warrum: The defendants severally object to the introduction of this evidence, for the reason that it occurred more than two years after the institution of this suit.

The Court: I think I will sustain that objection.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Hull: I just want to show your Honor what that placard was (showing court a paper).

The Court: Let the record show,—do you expect to follow this with proof of the person who put this notice up?

Mr. Hull: We never identified who put it up yet.

The Court: The objection will be sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Hull: That is all.

Mr. Covington: No questions.

Witness Excused.

2634 PLEASANT P. BAKER, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. Pleasant P. Baker.
Q. Where do you live? A. Hartford.
Q. How long have you lived there? A. Since '99.
Q. What is your business? A. Hardware business.
Q. Do you remember the night of October 31st, when you took four men from Hartford to Midland in your car?
A. Well, I dont recollect that particular date.
Q. Do you remember of taking four men from Hartford to Midland?
A. I did quite a lot of that; name the particular parties and I can tell you about it.
Q. Do you remember the night of a holdup of the marshal at Hartford? A. Yes, sir.
Q. And do you remember taking four men from Hartford to Midland that night? A. Yes, sir.
Q. Can you state who those four men were?

Mr. Warrum: The defendants separately object to this testimony, because it occurred after the institution of the suit, and is a collateral matter.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. State who those four men were?

A. There was John Champion, Dave Branch, Sandy Robinson and I dont recollect the other man.

Q. Was the other one Earnest Nein?

2635 A. Yes, sir, Earnest Nein is correct.

Q. Who paid you to take them over there?

A. John Champion.

Q. About [—] time of night was it that you took them over?

A. Well, it was something like eight or nine at night; at any rate, it was before the Slicker comes this way, to come to Ft. Smith.

Q. Will you state what time that Rock Island train leaves Hartford?

A. I think about 6:20, something like that.

Q. And where did you get these men?

A. I picked them up at Hall's livery stable.

Q. About what time?

A. It was 7:30, I guess.

Q. And did they state what they wanted to do there, either of these four men tell you where they wanted to go and what they wanted to do?

A. They said they wanted to go to Hartford, but didnt tell their purpose; they asked if I could take a carload over there, and I told them I could.

Q. Did they ever tell you what they wanted to catch at Midland, any train or anything of that kind?

A. No, sir, they didnt say anything about catching a train, but wanted to get there before the train ran.

Q. What time did that Slicker leave Midland?

A. It must have been about nine or ten that night.

Q. That was the train coming to Ft. Smith from Midland?

A. Yes, sir.

Q. And you delivered them at the depot at Midland?

A. Yes, sir.

Q. Did they have guns with them? A. Yes, sir.

Q. Now, on the way back, did you hear any of these four men say something about what had happened or what

2636 had not happened at Midland?

A. I heard one of them in the back seat in a conversation say that he was damned proud that he was not there.

Q. Did you hear them discussing things on the trip over or back?

A. I heard them discussing coming back about their union principles and so forth, if they didnt hold them up, there would nobody else, and general conversation like that.

Q. Do you remember who it was that said that he was proud that he was not there?

A. No, I dont recollect which particular one it was.
Q. Did you hear either one of them say whom they expected to find over there?
A. Yes, sir, from the purport of their talk I took it to be John Black.
Q. And do you know who John Black was?
A. Marshal at that time.
Q. United States Marshal? A. Yes, sir.
Q. Do you remember the day of the battle of July 17th?
A. Yes, sir.
Q. Where were you on the 16th of July?
A. You want me to tell you the whole round?
Q. No, just where you were.
A. I was at five or six or seven different places, and I went to Boonville on the day of the 16th.
Q. Were you returning from Ft. Smith to Hartford on the night of the 16th of July?
A. It was on the morning of the 17th that I was returning.
Q. And about what time did you pass through Frogtown going to Hartford?
A. Anywhere from twelve to two o'clock in the morning, I dont know exactly.
Q. What, if anything, occurred as you got near Frogtown going toward Hartford?
2637 A. I was held up by an army of men.
Q. Now, state what happened the first time, and then what happened each time that you were held up?
A. Well, as I approached near Frogtown there was some seven or eight, maybe ten, held me up, flagged me down, rather, and I stopped.
Q. What did they say to you?
A. They just talked to me in a general way, asked where I was going, and what I was doing out at that time of night, etc.
Q. Did they tell you anything about what was going to happen?
A. No, they didnt say anything about what was going on.
Q. Did they have guns?
A. No, they didnt have any guns.
Q. Now, where was that,—between Frogtown and Prairie Creek No. 4, or between Hartford and Frogtown?
A. Between Frogtown and No. 4, on the top of the ridge.
Q. Did you leave then and start on again toward Hartford? A. Yes, sir.
Q. What happened to you then?
A. I was held up again by about 15 or 25 men.

Q. Were there any guns in that crowd? A. Yes, sir.
Q. And did you recognize at least one man in that crowd?
A. I expect I recognized a half a dozen of them.
Q. Give the names of any that you remember.
A. Well, there was Sandy Robinson come to the car to me; he was in front, and he flagged me down and came over to the car to me, and he is about the only particular one I can mention.
Q. You say you recognized five or six, were these men that you knew, did they live in Hartford?
A. Why, yes they all lived around, surrounding places.
Q. And what business did you know they were in?
2638 A. Coal mining.
Q. Where they union miners? A. Yes, sir.
Q. Did they say anything to you about a password, or give you a password?
A. They pretended to give me some way to get by, and told me not to get excited over what I might see along the road, and gave me a pass word to get through.
Q. Did you leave them then and go on toward Hartford again? A. Yes, sir.
Q. What happened then? A. I was held up again.
Q. By how many men?
A. Anyway from 50 to 150.
Q. Was that in Frogtown?
A. That was at the west outskirts of it.
Q. Was that west toward Hartford?
A. Yes, sir, that is out on the road toward Hartford.
Q. Now, describe just how many men were formed there at Frogtown, at the west outskirts of Frogtown, and what they did and said, and who were if any of them?
A. They just seemed to be lined up in the road, marching out that way, or stationed. It was dark to me, and I couldn't see anything but in the light of the headlight, and they flagged me and I drove up there and stopped, and there were some three or four of them started out and climbed up on the running board and one of them raised my hat up,—it was at night, and he put his face up close to see if he could recognize me, and when he recognized me he stepped down off the car and gave the order to open ranks, and they separated, and I drove on through.
Q. Before he said "Open ranks", were they two abreast?
A. They seemed to be marching on the road two abreast.
Q. Were there some guns in that crowd?
A. Yes, sir, there were supposed to be, I didn't take hold and examine them, but they looked like guns.
2639 Q. Who do you remember seeing in that crowd of from 50 to 150 men?

A. I think Mr. McNamara was the man that raised my hat up, he was on the running board talking to me.
Q. What was his first name? A. James.
Q. Do you know where he worked?
A. No, sir, I don't know where he was working.
Q. Do you know whether that was the same McNamara that was afterwards indicted in this same trouble and went to the penitentiary? A. Yes, sir.

Mr. Hull: You may cross examine.

Mr. Covington: No questions.

Witness excused.

2640 JOHN S. SHALEEN, called as a witness on behalf of the plaintiffs having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. What is your full name? A. John S. Shaleen.
Q. Were you working for the Bache-Denman Company in the spring and summer and fall of 1914? A. Yes, sir.
Q. When did you go to work for them?
A. About April 15th.
Q. What was your position for that company?
A. Foreman.
Q. Foreman at No. 4? A. Yes, sir.
Q. Prairie Creek No. 4? A. Yes, sir.
Q. Do you remember of the occasion of your being served with a subpoena to go to Hartford to attend a hearing before the Labor Commissioner Cleary in connection with these troubles? A. Yes, sir.
Q. Do you remember the date of that?
A. No, sir, I don't it was about the 1st of May, I believe.
Q State what occurred on that day?
A. Well, John Davis came over and represented himself as a deputy sheriff, and told me that he had a subpena for a whole bunch to go over to that hearing of Cleary's at Hartford, and I told him that I would have to go to the office and call up and get orders from Mr. Cameron before I went, and he said, there is no use going over there because you can't get him, but I went, anyway, and after I tried to get Mr. Cameron over the phone and couldn't get him, I went out and he read his subpoena to the men around there.

Q. Did you finally communicate with Mr. Cameron
2641 in Ft. Smith?
A. Yes, sir.
Q. What did Cameron order you to do?
A. He told us to come into Ft. Smith as quick as we could.
Q. Did you discuss with Davis the matter of going over to Hartford? A. Yes, sir.
Q. What did you tell John Davis?
A. I asked him if we could leave part of the bunch there to protect the property, and he said, "No", we all had to come at one time.
Q. What did you do then?
A. Well, I asked him, "Now, what kind of protection are we going to protect" or whether we had to protect ourselves, and he said, "I will protect you"; and I said, "Well, I don't suppose the men will go there with your promise of protection", and I said, "We will take our guns and protect ourselves", and he said, "No, don't take any guns over there at all, leave them right here". And he went and after he left I took the matter up with the men around there, and asked if they wanted to go over, and they said they woudl not go over there at all, and in the meantime I got Mr. Cameron and he gave me orders to draw the fires, and come to Ft. Smith at once.
Q. How did you get to Ft. Smith?
A. By walking over to Mena Junction, Oklahoma.
Q. How far is that?
A. Really I can't say, but about 20 miles.
Q. How many men were there with you when you made that trip? A. 28.
Q. Do you remember how soon it was before you went back with the men again?
A. I think we went back on the 11th of May.
Q. Referring to the trouble that night on the train, on June 15th, when some of our employes, or some of
2642 the employes of the Bache-Denman Company had some trouble in getting off of the train at the crossing, the details of that has been gone over so many times I will not ask you to give it in detail, but I will just ask you if you were there? A. Yes, sir.
Q. And ask you whom you saw that you recognized among the union miners in that trouble?
A. Just John Menick and Sandy Robinson.
Q. You were not at the mine on July 17th?
A. No, sir.
Q. Where had you gone that day? A. Ft. Smith.

Q. When did you go back to the mine after July 17th?
A. Sometime in October, I think around the 27th or 28th, I couldn't be sure just when it was, except in October, the latter part.
Q. With whom did you go?
A. Mr. Coal and Mr. Atkinson, deputy marshal.
Q. And how many employes went with you?
A. Six or seven, I don't remember just how many went in the wagon with us that night.
Q. State where you spent the night of October 28th?
A. Back in a pit boss shack at No. 4 mine.
Q. On the afternoon of that day did you receive some warning that something was going to happen that night?
A. Yes, sir.
Q. Who gave you that warning?

Mr. Warrum: The defendants separately object to this, as relating to a transaction after the institution of the suit.

The Court: Objection overruled.

To which ruling of the court the defendants, and each
2643 of them, then and there duly excepted and still except.

A. Mr. Weston.
Q. Max Weston? A. Yes, sir.
Q. Did you, as the result of that warning, prepare, as well as you could, to defend yourselves in the house that you were staying in? A. Yes, sir.
Q. What did you do?
A. We had some steel plates brought up to the house and put around the walls, especially at the windows.
Q. State what occurred during the evening or night of October 28th?
A. We had all retired and about twelve o'clock, at midnight the shooting commenced and we got out there to see where,—to see if we could see anybody, but we could not, and we saw several flashes of rifles around there, and so we packed our ammunition that we had in a case and put in one of the grips to carry it that way with us, and the biggest part of the men, about 15 or 16 were out in the woods, they were afraid to stay in the house at night, they thought they would be safer than in the house, and the rest of us, about six or seven remained in the house; but we got right up and left after getting our ammunition in the grip.
Q. How many deputy marshals were there with you?
A. Two.
Q. Had there been a third one there during the day?

A. Yes, sir.
Q. About when did he leave you?
A. About 5:30 or 6:00.
Q. Did he tell you why he left?
A. He said he was not going to stay there.
Q. What was his name? A. Sid Johnson.
Q. After you had left the house where you were staying, did you look and see some fire? A. Yes, sir.
2644 Q. What houses, if you know, were being burned?
A. We judged No. 3 camp, and the house that we were staying in.
Q. What did you do getting away from there, where did you go?
A. We went up past Midland, over toward Montreal, and got out in the woods along the railroad right of way, and built a fire and stayed there until morning, and then walked to Hackett and then on into Ft. Smith.
Q. How far is Hackett?
A. I could not say, 12 or 14 miles.
Q. Did you go back again in November? A. Yes, sir.
Q. You were then operating the mines under the order of the court? A. Yes, sir.
Q. The receiver had been ordered to operate the mines?
A. Yes, sir.
Q. State when, if you know, the soldiers came?
A. They came there before we went out, I don't remember the day they came; a short time before we went.
Q. About what day did you go down there?
A. Well, I don't remember; I think in the early part of November, though.
Q. Was it soon after the troops got here?
A. Yes, sir.
Q. State the details of some one coming to the mine while you were foreman there, after you went there, after the troops arrived, with reference to the men working on the roads?
A. There was a man that represented himself as a road overseer, and said he wanted the names of all our men that were working there.
Q. Was anyone with him? A. John Menick.
Q. What did he say to you?
A. He said he wanted the names of all the men working there, and I told him that I couldn't give them to him, but that we would send over the money for every man that we had there, as we did the summer before.

2645 Q. What were you going to send money over for?

Mr. Warrum: The defendants separately object to this testimony, because it relates to a conversation between this witness and a road officer; I suppose it is relating to their duties, but I don't know the Arkansas road law.

The Court: The court cannot see where it would have any bearing.

Mr. Hull: This man that represented himself to be a road overseer, came there with John Menick, one of the defendants in this case, and asked the witness for a list of the men working there, and we maintain that was part of an attempt to get the names of our employes, and to continue this process of intimidation; and the foreman offered to give them, not the names, but two dollars; there is some road law here that requires two dollars, or a man working the road a certain number of days, and this man was arrested for not giving those names. It is simply a part to show disposition of the state and county officers.

The Court: I think perhaps this ought not to go in. It is very close, but at the present time I will exclude it.

Mr. Hull: We won't press it.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Q. Did you have any difficulty, Mr. Shaleen, in buying goods and supplies in Midland? A. Yes, sir.
Q. When the soldiers were there, how did you get to buy supplies?

Mr. Warrum: If the court please, the defendants separately object to this testimony, because it relates to a transaction occurring after the institution of this suit, and
2646 also a collateral matter.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. There was only two places in Midland that we could buy anything, and finally the second one of them shut down on us.
Q. Who were those places?
A. Bud Tharel and Seaman's.
Q. Did you have any experience in Seaman's store?

A. Yes, sir, I went in there one morning to buy some towels, and the clerk said he would rather not sell them to us, he said, "You know how these people are around here",—

Mr. Warrum: We object to the conversation.

The Court: Objection sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Q. You need not state what he said. Were you successful in buying the towels at Seaman's store? A. No, sir.
Q. Going back for a minute to a few days prior to the battle, do you know when the deputy marshals were withdrawn from the property under the old marshal?
A. I think the 15th of July, I believe it was.
Q. There had been three up to that time?
A. Yes, sir.
Q. Was the withdrawal of those marshals generally talked about and published, do you know whether it was published in the papers? A. I don't know.
Q. Was it commented upon, that you know of?
A. Among our men it was, yes, sir.

Cross-Examination

By Mr. Covington:
Q. How many mines were you operating over there at that time?
2647 A. He was operating some pigeon holes, and a part of the time a mine No. 7, Griffin's.
Q. Where was the pigeon hole with reference to what is known as No. 4 shaft?
A. I don't know just the direction that they was from No. 4, but one was known as the Griffin mine, up near ruble slope, and the other up on the creek going toward Huntington.
Q. How many men did he use at each place?
A. I don't know that; I don't remember.
Q. About how many? A. I couldn't say.
Q. Five or six?
A. We had probably more than that at each place. There was not over ten I don't think at each place, except Hoffman's mine.

Redirect Examination

By Mr. Hull:
Q. Just one more question: Do you remember the accasion or were you present when a man, a union miner named Johnson started to get into some trouble with some

of the employes, and United States marshal Morgan was there and quieted them? Were you present at that time?

A. No, sir.

Witness excused.

2648 CLARENCE A. SHALEEN, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your name? A. Clarence A. Shaleen.

Q. Where do you live?

A. Chicago at the present time.

Q. Were you working for the Bache-Denman Coal Company in the spring and summer of 1914? A. Yes, sir.

Q. When did you go to work for them?

A. About April 15th, 1914.

Q. Without going into detail of what occurred at the Prairie Creek station on June 10th, do you remember some shops were cut? A. Yes, sir.

Q. State whether or not you were there?

A. Yes, sir, I was there checking up the freight.

Q. And state if you saw who cut those chops?

A. Sandy Robinson cut the two sacks.

Q. With what did he cut them?

A. A knife, a pocket knife.

Q. Without going into details of what occurred, Mr. Shaleen, will you state whether or not you were on a train on June 15th, when some trouble arose, and deputy marshal Schell was called to the train?

A. Well, I was on that train, I was trying to get off, and John Menick and Clint Burris and Sandy Robinson tried to stop me from getting off.

Q. You were on the train with other employes?

A. Yes, sir.

Q. And who did you say was on that train of the union men?

A. All I could say,—there were 10 or 12 got on at Midland.

Q. And whom did you recognize?

A. They were the only three I recognized, Sandy Rob-

2649 inson, Clint Burris and John Menick.

Q. Did any or all or those three have base ball bats?

A. Yes, sir, three did.

Q. And what did any one of them say to you, if anything?

A. They said they were not going to let me off at the crossing there at the mine, that I had to go [—] Hartford with them, and when we got there I told them they were pullgin off a pretty serious offense, and they finally let me go through.

Q. Keep your voice up. Did you see Clint Burris using a base ball bat?

A. I saw him lay it against a young fellow by the name of Tony Boraski, a foreigner, and I saw him lay it against his head and strike him with it. He tried to work there at the mine.

Q. Will you keep your voice up, the jury has to hear what you say. Did you go down to the mine with your brother in October, 1914? A. Yes, sir.

Q. Were you there on October the 28th?

A. Yes, sir, I got down there about the 27th, the night of the 27th.

Q. I will ask you if you remember the night of the 28th when some shots were fired in there, and you left the house where you were staying? A. Yes, sir, I was there.

Q. There were deputy marshals with you there then?

A. Yes, sir.

Q. How many?

A. Mr. Atkisson,—there were two of them, three came down.

Q. What were their names?

Mr. Warrum: The defendants separately renew their objection to this testimony.

The Court: Objection overruled.

2650 To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. What were their names? A. And Mr. Cole.

Q. Had there been a third marshal there earlier in the day? A. Yes, sir.

Q. What was his name? A. Sid Johnson.

Q. When did he leave?

A. He left between 5:30 and 6:30.

Q. Did he say why he was leaving?

A. I didn't hear him say, no, sir.

Q. Did you have any difficulty in buying supplies in Midland while you were down there in October, November and December?

A. Yes, sir, at the drug store, I don't remember the name of the proprietor of the place.

Q. Do you remember whether it was Taylor's drug store?

A. I believe that is the name. I went in to try to buy a piece of camphor, and he refused to sell it to me.

Mr. Warrum: We object to this witness testifying to an experience he had in buying camphor at a drug store.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Were you successful in buying that camphor at a drug store? A. No, sir, he said,—

Q. (interrupting). Never mind what he said, don't tell what he said. How many men, would you say, were in the attacking party on October 28th, from the number of shots that were fired? A. I would say from two to three hundred.

Q. Did you, after you left the boarding house, or the house where you were staying that night, look back and see anything burning?

A. Yes, sir, I saw the house burning, from a corn field
2651 about a quarter of a mile from there.

Q. The house where you had been staying?

A. Yes, sir.

Q. Did you see any other fire?

A. That is the only one I noticed at the time.

Witness excused.

2652 FRANK M. MORGAN, called as a witness, in behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. Frank M. Morgan.

Q. You live in Fort Smith? A. Yes.

Q. In the fall of 1914 were you appointed United States Deputy Marshal to go down to Prairie Creek?

A. Yes, December 19, 1914.

Q. December 19th?

A. Yes, sir, that is the best of my recollection. That is right, I think.

Q. State where you were stationed.

A. I was supposed to be stationed at Prairie Creek.

Q. Under whom were you serving, Marshal Parker?

A. Yes, sir.

Q. What were your duties?

A. I was instructed when the men were—

Q. Talk up louder, I can't hear you.

Q. When the men were hunting the camp that worked at the non-union, Bache and Denman I will put it that way, it was non-union—to see that they were not molested getting off of the trains and going to the camp.

Q. You were at the Prairie Creek station?

A. Yes, sir. I didn't board there but boarded at the camp with the others and met the trains.

Q. Do you remember one occasion when some trouble started and you quieted it? A. Yes, sir.

Q. State what occurred and who was there?

Mr. Warrum: The defendants separately renew their objection.

2653 The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, then and there duly excepted and still except.

A. I was there some time in January, I believe it was. They began to get freight at that station, and it was a prepay station, and I would go over there with the wagons and the men and they would sign up and receive the freight and load it in the wagons and come on back to the camp. It was about three quartrs of a mile or a mile from the camp. And one night there was quite a lot of men there and they seemed to want to crowd around where the men were receiving the freight.

Q. That was the employes of the company? A. Yes.

Q. Do you know who they were?

A. Yes, one of them was Clarence Shaleen.

Q. The one that just left the stand, Clarence Shaleen?

A. Yes. He was receiving the goods and a young fellow by the name of Johnson was quarreling with him and I stepped up and put my hand on his shoulder, and said the United States was no respector of persons and it was my business to see that the man that made the assault was the one I would take down to the office, and he said that fellow raised the fuss with him and he didn't raise it and someone just out back in the crowd said, "Shoot the marshal". I didn't pay any attention to that, and this fellow quietly walked off and I didn't see him any more.

Mr. Hull: That is all.

Mr. Covington: No questions.

(Witness excused.)

Mr. Hull: These are all of the witnesses we have this afternoon but we can read a deposition.

2654 The Court: Proceed.

Mr. Drinker: We offer the deposition of E. F. Hackett taken at Coal Creek, Tennessee, at the same time as the other depositions. (Reading.)

"E. F. HACKETT, being duly sworn deposed as follows:

Q. Your full name is E. F. Hackett? A. Yes, sir.
Q. Where do you live? A. Huntington, W. Virginia.
Q. What is your business? A. Mining engineer.
Q. For whom do you work?
A. Walter W. Cunningham Co.
Q. What do they do? A. Consulting engineers.
Q. What was your business in the spring of 1914?
A. Was with the Coronado Coal Company as electrician and engineer.
Q. How long had you been employed by them?
A. Well I think my last dealings with them was about eight months prior to that time.
Q. 1914? A. Yes, sir.
Q. What were you doing in March of that year?
A. Working at No. 4 mine principally.
Q. What company operated that mine?
A. Coronado Coal Company.
Q. Operated No. 4?
A. That was my understanding, yes.
Q. You ever see any leases and papers connected with the company's operation? A. No, sir.
Q. When you say that Coronado Coal Company operated No. 4 on what do you base that statement?
A. That was just my understanding. There were a number of interlocking companies Prairie Creek Coal Mining Company, Mammoth Vein Coal Company, Hartford Coal Company—
Q. In March 1914, toward the end of the month what events happened in connection with the employment which
2655 particularly impressed themselves upon you?
A. We installed electric lights around the mines, and was closed down.
Q. When?
A. During the latter part of March, don't remember the exact date.
Q. What else did you do?
A. Put up a wire rope, roped it off and posted notices.

Q. What kind of notices?
A. That none only employees would be allowed within the enclosure.
Q. When did you open up again?
A. I think about April 1st.
Q. When did you start to lift coal?
A. I think Saturday was the first day, about April 4th.
Q. Where were you on that day? A. At the mine.
Q. See any people around other than employes?
A. A few around outside of the ropes.
Q. Recognize any of them?
A. Didn't pay any particular attention.
Q. What did you do next day?
A. Went to the mines, I suppose I got there about 9 o'clock.
Q. Who was with you? A. I think Mr. Cameron.
Q. Who was he? A. General Superintendent.
Q. Where did you live? A. Middlin.
Q. How far from Prairie Creek No. 4?
A. Three miles.
Q. Where did Mr. Cameron live?
A. Middlin, lived together.
Q. When you got there on the 5th what did you do?
A. Finished up with the wiring and lighting.
Q. See any people around other than the employees of the company? A. Yes, quite a few.
Q. Who? A. People from the community.
2656 Q. Men or women? A. Both.
Q. Any former employees of the company there?
A. Some.
Q. What were they doing?
A. They were standing outside of the rope hollowing.
Q. In what way?
A. At the men that were working there.
Q. In what way? A. Calling them scabs and so on.
Q. What else?
A. Hollowing calling them [scans] and jeering at them.
Q. Recognize any of them?
A. I don't recall them now.
Q. How many men were used by the company at that time?
A. About 12 I think.
Q. You had twelve men in there? A. Yes, sir.
Q. What were their names as far as you remember?
A. There was Looper, I don't remember his initials, Barns and Surrells, another one of the Loopers, I don't remember his initials.
Q. Were there any guards?

A. Burns was a guard and Bailey was there as a guard.
Q. You know somebody that worked with Looper?
A. Surrels.
Q. Anybody else work with him?
A. I don't recall the names right now.
Q. On the 5th day of April, any disturbance, any fight?
A. No, sir .
Q. What happened on the 6th of April?
A. On the 6th of April in the morning was not anything of any event until about ten o'clock there was a band of—quite a large crowd, about seven hundred, headed by a band come from the direction of Hartford toward Prairie Creek school house, then later, about twelve or maybe a little later another bunch came from the direction of Huntington road headed by a band to the school house.
2657 Q. How many in the Hartford Crowd?
A. About seven hundred.
Q. In the Huntington crowd?
A. About the same amount.
Q. What time did they get to the school house?
A. About one o'clock.
Q. How long were they there? A. About two hours.
Q. What were they doing there?
A. Couldn't tell you was not there.
Q. What were you doing?
A. I was at the mines, looking after the electrical arrangement.
Q. Then what happened?
A. Mr. Cameron sent me word about the middle of the afternoon to come to the office that they had sent word down that they wanted to send a committee to talk to me, wanted me there when he received the committee.
Q. What did you do? A. Went to the office.
Q. Then what happened? A. Committee came down.
Q. Who were they? A. Howard, one of the Hoard's.
Q. You know his initials?
A. I think A. S., there is father and son.
Q. This the father or son? A. Son.
Q. Who else? A. John Manick.
Q. Who else? A. Jim Slankard.
Q. Where did they come? A. To the office.
Q. Know if they were union men? A. Supposed to be.
Q. What did they say there to you when they came to the office?
A. Came in the office and Mr. Howard said that they didn't want this to be a repetition of Colorado and that was

about as far as he got with what he intended to say, I don't know what it was, the disturbance broke out on the outside.

Q. Did you see it? A. Part of it, yes.

2658 Q. Where were you? A. In the office.

Q. How were you looking out?

A. Through the window.

Q. What did you see?

A. I saw the fighting between the two guards and the mob.

Q. Where were the guards?

A. Standing just in front of the office and to one side.

Q. East, West, north or south?

A. To my left facing the mines.

Q. Where were the guards with reference to the wire?

A. Ten to fifteen feet back of the wire.

Q. Inside? A. Yes, sir.

Q. On the company's property? A. Yes, sir.

Q. What did you see at that time?

A. I saw Mr. Barns go down, crowd on him, apparently on him, seemed to get up or half way up and borne down again.

Q. Barns have a gun? A. Yes, sir.

Q. What kind? A. Winchester.

Q. Fired off? A. No, sir.

Q. You see any disturbance with the other guard?

A. Saw him in the mob.

Q. Who was that? A. Bailey.

Q. What did you see with reference to him?

A. Couldnt' tell very much about what happened any more than they were around him and seemed to be striking.

Q. How many of them were there around Bailey?

A. In the crowd, both of them, [altoghether] about I would estimate 150 to 200.

Q. Then what happened to Bailey?

A. Bailey succeeded in getting out of the crowd and came to the side door of the office and we let him in.

2659 Q. Who let him in?

A. Myself and John Patterson.

Q. Who was he? A. Foreman, mine foreman.

Q. John Patterson, Sr. or Jr? A. Junior.

Q. What condition was Bailey in at that time?

A. Had like a [knige] cut in one hand.

Q. Inside or out.

A. (Drawing the fingers of the left hand across the middle of the palm of the right hand). I would not be sure if it was the right or left hand.

Q. What other marks have on him?

A. His face was pretty well covered with blood and seemed to have some cuts on his head after we examined him.

Q. You examine him? A. Yes, sir.

Q. What happened to Barns if you know?

A. Next I remember of seeing of Barns somebody had hold of him and took him out of the crowd.

Q. Where did they bring him?

A. Next time I saw him he was at the house where the guards stayed, I presume they took him there.

Q. What then happened?

A. Well the crowd went over to the mine, the whistle started to blow and the band [marked] in and played and some one went to the head frame and hoisted the American flag and placed a large banner up under it.

Q. What was written on the banner.

A. This is a Union Man's Country.

Q. Then what happened?

A. A crowd came back to the office, a part of them, the rest of them dispersed.

Q. Who was in the office at that time?

A. Mr. Cameron, two Pattersons, Jr. and Sr., Mr.
2660 Argo, Bailey and myself and I wouldn't be sure about Mr. Thresher.

Q. Who were Mr. Argo and Mr. Thresher?

A. Bookkeepers.

Q. You say the crowd came around the building?

A. Came to the front door and pounded on that trying to get in.

Q. Locked? A. Yes, sir.

Q. Then what?

A. Going around and around the office and hollowing to come out or let them in, trying to get in.

Q. How long did they stay around there?

A. Must have been an hour, seemed that way to me.

Q. Then what happened?

A. Mr. Slankard came to the back door and asked to let him in and they let him in and he asked if we had a gun of any kind there and some one told him there was one lying on the floor in the corner under some papers and he took the gun and went off and made a talk to the parties on the outside and that dispersed them.

Q. Know whose gun it was?

A. No, sir, belonged to the office, I think.

Q. Fire it off at all? A. No, sir.

Q. Then what happened after that?

A. After the crowd left Mr. Cameron and I went to the mine head house boiler plant and examined things and went from there to the house where the guards lived.
Q. Then where did you go? A. Fort Smith from there.
Q. From there?
A. Well I stayed in Fort Smith several days and then I went on home.
Q. Where was your home? A. Spiro, Oklahoma.
Q. Where did you go from there?
A. Back to Fort Smith.
Q. When did you come back?
A. Don't remember the exact date of going home, about a week.
2661 Q. Where were you when the injunction was applied for? A. At Fort Smith.
Q. You testify in that proceeding? A. Yes, sir.
Q. Where did you go after it was granted?
A. I stayed there about one week, until it was granted and then came to Knoxville.
Q. Why? A. To get labor.
Q. You get any? A. Yes, sir.
Q. When was that?
A. First parties went out on, I believe the 7th or 8th of June.
Q. You know how many in that party? A. Four.
Q. Who were they? A. Outside of the men with them.
Q. Who was with them? A. Eustice.
Q. What Eustice? A. Bud Eustice.
Q. Who else were in that party?
A. Two Thomas' and one other fellow here this morning, I don't remember—
Q. Suttles? A. Yes, sir.
Q. Then Suttles was in that crowd? A. Yes, sir.
[Q. Then Suttles was in that crowd? A. Yes, sir.]
Q. See them yourself? A. Yes, sir.
Q. Hire them? A. No, sir, Mr. Eustis did.
Q. You tell them anything about the conditions at Fort Smith? A. Yes, sir.
Q. What did you tell them?
A. Strike on but we had a Federal Injunction and thought we would have federal protection in case of trouble.
Q. They went to Fort Smith with Eustis? A. Yes, sir.
Q. What did you do, stay around here?
A. Knoxville and Oliver Springs.
2662 Q. You got some more men?
A. Yes, Mr. Thomas got them for us.
Q. Thomas come back? A. Yes.

Q. When did he come back? A. First of July.
Q. How long did he stay at Prairie Creek?
A. From the time he got there, take about two days to get there and two days to come back, little less than thirty days, about three weeks.
Q. Got some more men? A. Yes, sir.
Q. You know who got Saunders? A. I got him.
Q. Some others go on with Saunders?
A. Yes, bunch Mr. Thomas got up.
Q. Know who they were? A. Part of them, yes.
Q. How many were they?
A. I think about 12 and four women.
Q. You go with them to Fort Smith?
A. Yes, to Mansfield.
Q. When did you get there?
A. About the 10th day of July, I believe it was.
Q. How long did you stay there?
A. I stayed at Prairie Creek one night.
Q. Then where did you go? A. Muskogee.
Q. Where did you go on the night of the 16th and 17th and on the 17th?
A. On the night of the 16th in Muskogee and the 17th until one o'clock between Muskogee and Fort Smith.
Q. Didn't see the battle? A. No, sir.
Q. When you were in the office at that time and saw the crowd outside and the fight between the crowd and Bailey and Barns, did you recognize any people in the crowd other than Bailey and Barns? A. Yes, sir.
Q. You make within a few days afterwards a memorandum or notation of the persons you recognized at that time?
2663 A. Yes, sir.
Q. Have you got that? A. Yes, sir.
Q. Will you look at that memorandum and give the names, not all the persons checked or noted on the memorandum, but persons of your own knowledge and memory of this minute, remember having seen in that crowd at this time? State after refreshing your memory the persons [when] you now remember seeing there at that time in that crowd? A. All of these checked.
Q. The ones you remember seeing.
A. John Bumpas, Don Fitzgerald, W. P. Fitzgerald, Clint Burris, Fred Wooten, John Wooten, Jim Lee, Edward Davenport, Frank Canfelt, John Graham, Sid Shaw, Howard Shaw, J. W. Howard, A. S. Howard, John Mannick, Tom Rodden, Claude Carruth, Andy Kyle, J. H. Rodden, Ma-

rion Hulsey, Mage Hulsey, George Mannick, and Jim Slankard, that is all I remember of now, but that does not include all that is checked.

Q. What does that memorandum at which you are looking consist of?

A. Injunction that was issued by United States District Court, Western District of Arkansas, Fort Smith Division.

Q. Where are the names from which you have been reading stated in that? A. I think filed—

Q. I mean on the paper? A. In the head of it.

Q. This said in the heading of the case as Plaintiff or defendants? A. Defendants.

Q. What memorandum have you as to persons whom you saw there? A. This is the only one now.

Q. What have you marked on the paper to show this?

A. Just a plain check mark.

Q. Across what persons?

A. Persons I have named.

2664 Q. Are there any names checked on that list by you whose names you did not give as persons whom you now remember having seen in this disturbance on April 6th? A. Yes, sir.

Q. How many names have you checked on that list as indicated at the time you made the check that you saw those men there? A. 37.

Q. When did you make those check marks?

A. I made them right after the injunction was made permanent, or hearing was completed.

Q. Which?

A. Right after the hearing was completed.

Q. On the permanent injunction.

A. Yes, sir."

2665 Cross-examination

Mr. Warrum (reading):

"Q. When was the permanent injunction granted and by whom? A. Granted by Judge Youmans.

Q. On what date?

A. I don't recall the exact date, in April.

Q. About how long after the 6th of April, referred to in your testimony?

A. About ten days, best of my recollection."

"Q. Out of 1500 you picked out 37, no more and no less?

A. No, sir.

Q. You made no note of it until fifteen or twenty days after you saw them?

A. No, sir, you are mistaken, made a note of it on the 6th of April.
Q. Going into the law business then were you not?
A. Not any more than now.
Q. That was your object in making a note of whom you saw? A. No, sir.
Q. What did you make a note of them for?
A. These people were inside of the enclosure on the company's property, why shouldn't I,"—

Mr. Warrum: Will the court allow me to glance over this?

The Court: Yes, I think it will save time.

Mr. Drinker: He is skipping from question 37, and I am going to read that if he does not.

Mr. Warrum: I am doing the best I can.

The Court: I think you are.

Mr. Warrum (reading):

"Q. Did you meet Jim Slankard face to face?"

Mr. Drinker: What did you skip?

2666 Mr. Warrum: I skipped to question 31. (Reading):

"Q. Did you meet Jim Slankard face to face?
A. Yes, sir.
Q. You were not molested?
A. No, sir, not by Mr. Slankard.
Q. Were you by anybody, you are testifying, were you by anybody? A. Didn't say I was.
Q. Why did you leave the inference that they would, Mr. Hacket?
A. I feel positively sure if I had gotten out of the Prairie Creek mine office, I would have been.
Q. Met old man John Bumpus? A. That day?
Q. Yes. A. No, sir.
Q. See him? A. Yes, sir.
Q. Where?
A. Old man Bumpus, you are mistaken young John Bumpus, both the same name, are they not?
Q. You live in that neighborhood you ought to know, are they?
A. I think they are, I think one is John and the other J. W.
Q. Now, Hackett, don't you know you fellows had old man John Bumpus over at Fort Smith, the man you have got

checked here and that you obtained an injunction against him, and now you say you don't know if he was there or not, think it was his son?

A. I know the young Bumpus was there.

Q. What is his name?

A. First name I think is John."

Mr. Warrum: Down to question 90 on page 20. (Reading):

"Q. The crowd had not gone on the inside of the enclosure at all until Slankard appeared?

A. I think they were over the ropes, part of them, best of my recollection.

Q. The fellow that struck Barns fell over the ropes?

A. I don't know.

Q. See Barns push him with his gun? A. No, sir.

2667 Q. Didn't see the first? A. Not the start.

Q. See Rile Bailey, another guard, pushing the women and children around and when some fellow hit him?

A. No, sir.

Q. The same Rile Bailey was fined $100.00 for insulting a little girl going from school?

A. First I ever heard of it.

Q. You live there in Middlin?

A. I did prior to April 6th.

Q. You lived there afterwards? A. No, sir, did not."

Mr. Warrum: I will now skip to the top of page 22, beginning with question 113. (Reading):

"Q. When did you first learn you were going to close down?

A. I don't remember the exact date notices were posted.

Q. What notices?

A. Written notices posted at the mines.

Q. By the company? A. Yes, sir.

Q. Notices of what?

A. The mine would be closed down and resume operations upon the open shop basis.

Q. Was that on the day you closed down?

A. Best of my knowledge it was a few days before.

Q. By way of refreshing your memory wasn't it a fact those notices were put up the second day after you closed down? A. I couldn't say sir, positively.

Q. The employees working in the mine at that time reported for work on the morning you closed down, didn't they?

A. I don't recall if they did or not."

Mr. Warrum: I will omit the rest of the cross-examination.

Mr. Drinker: There are certain portions left out that we want to read. Question 18, did he omit from question 18? He went so fast I could not get it. Did he omit beginning
2668 with question 18 on page 13?

Stenographer Perkins: I will look back and see.

Mr. Warrum: I omitted question 18.

Mr. Drinker: I want to read question 18. The question before that was (reading):

"Q. What did you make a note of them for?

A. These people were inside of the enclosure on the company's property, why shouldn't I, it was posted.

Q. You going to prosecute them?

A. I wasn't personally, but notices had been placed up and were placed up there warning people to stay out and natural assumption that the company would prosecute anybody that violated those notices, that was their right.

Q. Had you been instructed to make a note of persons who came on the premises? A. No, sir.

Q. Then it was not a part of your duty as an employee to do that, was voluntary on your part?

A. I considered it my duty, yes, sir.

Q. Could you name the 38 men that was there, you made it 37?

A. I suppose if I could I would have done it at the time.

Q. Let me see the paper from which you testified. When did you make these notations? (Pointing to the memorandum from which Mr. Hackett refreshed his memory.)

A. On that paper?

Q. That's what I am talking about?

A. After the injunction hearing was made permanent.

Q. This paper appears to be a printed writ of injunction, temporary writ of injunction issued on the 9th day of April, 1914, by Judge Jacob Trieber sitting by assignment, how many days after the 9th day of April was it that you made
2669 the notations on this paper?

A. It was a few days after a hearing for the permanent injunction.

Q. This same paper from which you testified shows that the matter of the application for a temporary injunction was to be held at the court house at Fort Smith on the 18th day of April, 1914, at 9:30 o'clock A. M., now when was the hearing had? A. I don't remember the exact date.

Q. But you do know that when you made the notations on this paper, was some days after the injunction was made permanent?

A. After the hearing for the permanent injunction.

Q. From whom did you receive this printed instrument from which you have been testifying?

A. I would not be positive, from United States Court or Coal Company's office. I believe I got it from Mr. Wellshears's office.

Q. This same paper from which you have been testifying contains the names of 67 defendants. do you now say that yon can't name any of the remaining defendants, I mean in addition to the 37 that you have checked on this list?

A. Probably name them, but not absolutely sure I seen them and would not testify to them unless I was sure.

Q. Meet and talk to parties which you have given as being there on that occasion?

A. On different times, yes, sir.

Q. Did you on the 6th day of April meet them face to face and talk to them?

A. No, sir, Don't think it would have been very good for me if I had met them face to face."

Mr. Drinker: Now, I omit, of the omitted portion, as far as question 71, three or four pages. (Reading):

"Q. What did Slankard when he came in there and got the gun and went out of the office and went back out to where the crowd was gathered, what did he say to them?

2670 A. Doors were closed, I don't know. I know they left.

Q. That was before any one went in the enclosure?

A. No, sir, after it was all over, mob had done [gon] in the plant and come back out.

Q. Who did you say sent for you to come to the office?

A. Johnny Cameron.

Q. Were you in the court house when Cameron testified in this injunction suit?

A. I might have been in the court house, I was not in the court room.

Q. You say Slankard, after it was all over, went out and dispersed the crowd, after the crowd had taken the plant, hoisted the American flag and put up a sign?

A. Slankard was out there himself in part. Part of the crowd came back, the whole of the crowd came back, part of them stopped at the office and the rest went on home, or somewhere else.

Q. All breaking up when he came in and got the gun?

A. The part around the office didn't seem to be.

Q. If that is true why did you testify in the Court before Judge Euman in Fort Smith that Jim Slankard went out on the coal slack pile and said something, you didn't know what, and then the crowd broke over the enclosure and came on inside? A. I testified to that and it is true.

Q. Then why do you say now that it was all over and none leaving when Slankard—

A. That was different time.

Q. Different time?

A. Some, I presume hour or hour and half later than he came and got the gun.

Q. Hour and a half later?

A. Might not been that long.

Q. Been in there before? A. He had, yes, sir."

Mr. Drinker: I will now skip to question 86. (read-

2671 "Q. You hear all that was said in the office between the Committee and Mr. Cameron on the 6th day of April?

A. I think I did, I might have missed some of it."

Mr. Drinker: Then I will skip down to question 109 of the omitted portion. (Reading):

"Q. Before you shut them you were making preparations to enclose it were you? A. Yes, sir.

Q. How long had you been making preparations?

A. You mean—

Q. How long had you been making preparations to enclose the mine before you shut down?

A. Not been making any prior to that time.

Q. What did you say you were for? You said you were?

(Mr. Covington): Read back the questions.)

(Stenographer reads back)".

Mr. Drinker: Stenographer reads back questions 109 to 112. (eRading):

"Q. What did you say you were for? You said you were?

A. I answered that wrong. We were not making preparations prior to closing down.

Q. When did they first learn you were going to close down?

A. I dont remember the exact date notices were posted.

Q. What notices?

A. Written notices posted at the mines.
Q. By the company? A. Yes, sir.
Q. Notices of what?
A. The mine would be closed down and resume operations upon the open shop basis.
Q. Was that on the day you closed down?
A. Best of my knowledge it was a few days before.
Q. By way of refreshing your memory wasnt it a fact those notices were put up the second day after you closed down?
2672 A. I wouldnt say sir positively.
Q. The employees working in the mine at that time reported for work on the morning you closed down, didnt they?
A. I dont recall if they did or not."

Mr. Drinker: I will skip the rest of the cross-examination and just read the redirect examination. (Reading):

"Redirect Examination

By Mr. Drinker.
Q. Why did you keep the door locked after the crowd got there and the banner raised?
A. Didnt want them to get inside.
Q. When Mr. Covington asked you whether or not you were sure that the list was correct in toto and you answered that you were not sure, did you have reference at that time to the checked list you handed him or names of persons you made you said you remembered?
A. I had reference to the list in total.
Q. You know what Slankard, Howard and Mannick came down to the mine for, what [the] wanted to ask you to do?
A. Mr. Howard said to Mr. Cameron they didnt want any repetition of Colorado and that was about as far as he got.
Q. You know their purpose in coming down there, what their object was, what they wanted you to do?
A. Dont know what their object was.
Q. What is your impression of what they wanted to do?
A. I presume wanted—"

Mr. Drinker: I will stop there and read next (reading):

"Q. In answer to Mr. Covington's question on cross-examination relative to your relation with William
2673 Saunders prior to his going to Prairie Creek, you made a statement concerning your knowledge as to certain things that Mr. Saunders knew at that time, on what did you base that statement?

A. He was told there was a strike going on there.
Q. Who told him? A. I did.
Q. What did you tell him?
A. I told him there was a strike and that there was an injunction issued and that I thought there would be ample protection.

(Mr. Drinker: In explanation of Mr. Covington's remarks and questions in reference to list from which Mr. Hackett testified, I offer in evidence Mr. Hackett's memorandum and ask that it be annexed to his testimony, marked Hackett Exhibit "A".")

Mr. Drinker: Which I now offer in evidence. It is in the original deposition.

Mr. Warrum: The defendants separately object to the introduction of this private memorandum that was made by this witness long after the crowd in which the persons were assembled were being guarded, and it was a private memorandum used as his own memorandum and in no way complies with the rule that applies to the introduction of original documents or copies.

The Court: Yes, the only way a memorandum of this kind can be used by the witness, but it is not evidence itself. If a witness can refresh his recollection from such a list and state the facts, then that becomes testimony, but the mere fact he has a list does not make the list evidence. I do not understand the witness says that this memorandum was made at the time.

Mr. Drinker: He made it a few days afterwards.

The Court: It is only necessary that it be made at
2674 a time at which he remembered and what is in it states what occurred. Now, the witness could refresh his recollection from such a memorandum and then state what occurred, but you cannot introduce the list.

Mr. Drinker: I introduced it in connection with the cross-examination of Mr. Covington. He cross-examined him about it.

The Court: I do not think the list can be introduced.

Mr. Drinker: All right.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Hull: That is all.

The Court: At this time we will adjourn until tomorrow, Tuesday, November 6th, 1917, at 9:30 a. m.

2675 Fort Smith, Arkansas.

Tuesday, Nov. 6, 1917, 9:30, a. m.

Pursuant to adjournment as last aforesaid, came all of the parties as before on Tuesday, November 6, 1917, and the trial of the case proceeded as follows:

D. A. STEELE, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

[Direc] [Texamination]

By Mr. Hull:

Q. Your name is D. A. Steele? A. Yes.

Q. What is your present occupation, Mr. Steele?

A. Railroad agent and express agent,—Wells Fargo.

Q. At what station? A. At Hartford, Arkansas.

Q. Did you hold that position in 1914?

A. Yes, sir, with the exception of a short period I was away on a vacation.

Q. Were you there in July, 1914? A. Yes, sir.

Q. Do you remember the circumstances of going out to the Dallas mine and finding it on fire? A. Yes, sir.

Q. State what occurred in that connection, when it was and all about it?

A. It was Sunday morning about one o'clock, July 19th.

Q. July 19th.

A. Yes, sir, Sunday morning about one o'clock. I was called,—

Q. Who called you?

A. Mr. Jim Long. We have rooms in the station and it takes about thirty minutes to walk out to the Dallas mine and we reached there at 1:30 possibly.

Q. In the midlle of the night?

A. Yes, sir, Sunday morning, and we found the engine room on fire.

2677 Q. Talk a little louder, Mr. Steele, it is hard work to hear you?

A. We found the engine room practically consumed. The fire was still burning on the timbers leading up to the tipple. So I gave my attention to releasing the cars that were in danger.

Q. Those were what cars?

A. Midland Valley cars that were stored there.

Y. And you were agent for the Midland Valley also?
A. Yes.
Q. What did you do with reference to pulling those cars out?
A. I secured the assistance of several parties.
Q. Who were they?
A. Mr. Long, the party that called for me, and Charles Clayburn.
Q. Do you know whether he is the father of Lloyd Clayburn? A. No.
Q. Do you know where he lives?
A. No. He lived near the mine, but I dont know whether he lives there at this time.
Q. Was he a miner?
A. Yes, and there was Mr. Ellard, I think his name is William. He was operating a small mine in the vicinity there and Mr. Cope, I forgot his given name; I think it was John. And George Fuller. Those were the parties that assisted me in releasing the cars.
Q. What did you do with reference to pulling those cars out? Where were they?
A. On the track leading up under the tipple. They had stored them there. They were not using them then.
Q. The Dallas mine was not being operated then?
A. No. We secured crow bars and cut them off in bunches of four each and dropped them out on the main line.
Q. How long did you stay there?
A. Possibly 45 minutes.
Q. What was the condition of the engine house when you left?
2678 A. It was practically consumed.
Q. Was any part of the tipple burned then?
A. Yes, the tipple timber leading from the engine room to the tipple, the part that extends above the tracks.

Mr. Hull: You may cross-examine.

Cross-Examination

By Mr. Covington:
Q. Mr. Steele, did you know anything about the conditions surrounding that mine just prior to that?
A. No, sir, I had not been out there for quite a good while. The mine had been idle and I had no occasion to check it up.
Q. The mine had not been operated for a long time?
A. Not for several weeks, possibly months, I have forgotten just how long.
Q. The pile of slack or stuff that was thrown out there had been afire for months and burning up to the,—

A. (interrupting). No, sir, I dont know anything about that.

Q. You say that Charles Clayburn assisted you in putting out the fire?

A. Not putting out the fire, he helped me release the cars.

Q. Who put out the fire?

A. I could not tell you.

Q. What? A. I dont know.

Q. It did not burn?

A. It seems to have gone out of its own accord. It was burning when we returned home.

Q. Didnt the men gather in there and put out the fire and save the tipple? A. Not to my knowledge.

Q. After the engine room was destroyed?

A. Not to my knowledge,—not while I was there.

Q. You left after you released the cars, did you?

A. Yes, sir, after I performed my duty, I left.

Witness excused.

2679 J. J. JOHNSON, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name. A. J. J. Johnson.

Q. Where do you live, Mr. Johnson?

A. Well, I make my home now in Jacksonville, Florida, I have for the last year and one-half.

Q. What have you been doing there for the last year and one-half?

A. I have been assistant manager in a paper manufacturing plant for the Salvation Army.

Q. That is your present occupation? A. Yes.

Q. And you are going back there when you get through here? A. Yes.

Q. You came here to testify?

A. Yes, sir, I came up here to be a witness.

Q. What were you doing in 1914?

A. I was a coal miner all my life time since I was small, until two years ago. I was a coal miner in 1914, digging coal for a living.

Q. Where?

A. I was working the first part of that year out at Briceville, Tennessee. I came from there in July out to Prairie Creek.

Q. Were the mines you worked in union or non-union mines?

A. All were open shop mines in Tennessee where I worked.

Q. You came here with Mr. Thomas and his wife and family and the rest of them in the early part of July?

A. I came with Mr. Thomas. Thomas was with the crowd I came with.

Q. You came with him the second time he came?

2680 A. I reckon, it was when his family came.

Q. When you got here you came to Prairie Creek?

A. Yes.

Q. To work for these companies?

A. Yes, to work for the coal companies.

Q. What were you doing for them when you got here?

A. I worked about a week.

Q. What were you doing during that week?

A. I worked four days, I believe, as well as I remember. I was assistant boss cleaning up some entries, some old workings that had not been worked for some time.

Q. Did you work day or night? A. Day.

Q. During the week that you were there did you hear any shooting going on?

A. No, I didn't hear anything that I would remember.

Q. Where were you during the night of July 17th, the day before the big battle?

A. The day before, on Thursday,—I worked on Thursday.

Q. The night before?

Q. On the night before I stayed on the hill, just above the hill at No. 2 camp or No. 3 camp.—I don't know which it is.

Q. What were you doing there?

A. I was sleeping in the house every night.

Q. You slept during the night of the 16th, did you?

A. Yes, until before day.

Q. What waked [—] up?

A. A lot of shooting going on around there.

Q. What time was that?

A. It was some time, I couldn't say just what time it was because we had no time piece at all where we were at, but it was some time between two and three o'clock, it was

2681 between two o'clock and day time, anyway.

Q. How many shots did you hear?

A. I have no idea.

Q. Well, was it ten or one hundred?

A. I couldn't say. There was more than ten. I could not say how many.

Q. Do you know where those shots came from?
A. No, they seemed to be all outside of the place, right close around it.
Q. Did anything happen from then until breakfast time?
A. We all sat up until day.
Q. The next shooting you heard was when?
A. I got up from the breakfast table, something after seven o'clock, I am not posiive just what time it was. Bud Eustice was at the breakfast table and I heard him say that they was not working, that there was no power on, that the wire was cut.

Well, I didn't know this trouble was brewing as it was and me and a man by the name of Sanders and his wife and old man Daugherty and his son were out to where we slept when I got there. We had left some chairs there and I was picking up the chairs to put them in the house, and right below me at the slope of the mine two or three shots went off quick, and I seen two guards going up from where we were in the direction of the mine and by that time they commenced shooting everywhere.

Q. Those two or three shots, where did they come from?
A. It was down towards the mine,—I don't know who shot them.
Q. What do you mean by "down towards the mine"?
A. Towards the slope that was burning up down there.
Q. No. 3?
A. I guess it was. It was above the fan from where we were working.
Q. Were those shots inside the camp or outside?
A. They seemd to be down about the mine. I didn't
2682 see who did the shooting, I could not tell.
Q. Then what did you do?
A. Just at that time, when I did this, this old man Daugherty and his son and this other man and his wife started around toward the woods, and I said, "Give me the Winchester, I don't know what is the matter." And I started down, keeping a house between me and the men. I seen it was on fire with the smoke coming up, and I got down to the field and saw the whole place of people and I went back and helped Thomas get his people out of the house.
Q. Where did you go?
A. Over in the woods. There was three or four children lost,—I know three children were lost, anyway, from the parish, little girls. And I got Daugherty and them, and we went down to a bluff, a place we could not get off, a kind of bluff, and I looked over the bluff and seen a lot of men down below

with guns and I had a white handkerchief and I threw it up that way (indicating) and we went down maybe 200 yards or further on down the ravine, and we all stopped in a place and sat down. Everybody was scared and the children were scared and the shooting was continuous all over the place behind us. And I said to the people, "You stay here and I will go off and try to find a place to get out, and if I don't get killed I will come back." And I started off and went 200 or 300 yards through the woods in the direction I started from and I run right upon a man with a gun, within ten feet of him, and he halted me, and I told him I was trying to get out of there. He asked me what I was doing, and I told him I was trying to get out of there, and he said, "You can't get out, every place is guarded, you are up against it." He asked me if I was a guard and I said, "No, coal miner". And he carried me down to the place where the mine was set on
2683 fire and the people were all gone. And I told this man I left some women and children back in the woods and I told them I would be back if I wasn't killed, and he said I could not go back, and I said I must, and he let me go back.

Q. Did you tell him where the children and women were?

A. Yes. And when I got back there he was there and some more people.

Q. On your way back, where did you go?

A. I went in the house we slept in to get my coat and the two Daugherty's coats, and I wanted water awful bad. It was awful hot and I had been skirmishing around for an hour and a half and I went in there and could not get any water there and I went in the Thomas house and as I came out on the steps two windows were shot. I could not tell where the balls came from, but they went in both of the windows and the glass came around both sides of me. And I wrapped a white towel around my head and went back to the woods and found the women and children and this man was there.

Q. What happened then?

A. We all started for Hartford.

Q. Did you stop anywhere on the way before you got to Hartford?

A. Yes, we stopped for water a half a mile, or maybe a mile it was from there, we stopped at some farmers' for water.

Q. Did you see anybody there that you knew, or afterwards knew who he was?

A. Why, yes, we met up with a fellow by the name of Pattie, and I dont' know the names of the other fellows who was there.

Q. Do you know what Pattie's other name was?

A. No, sir, I don't. I am not positive what his other name was.

Q. Do you have any recollection of what his name was?

A. I could not be positive. I dont' know whether it
2684 was Charles or not.

Q. Did you know any Pattie back in Tennessee?

A. Yes, I used to know his daddy. He told me Joe Pattie was his daddy. Joe Pattie was the first man I worked for in the coal mines 35 years ago.

Q. Was Joe Pattie there?

A. No, sir, he was dead. That was his boy.

Q. At this spring, did anything happen there in connection with one of the men that was with you, with his children that were there?

A. A fellow had his wife, and I think he had some children. I don't know what his name was. He was told if he went on to Hartford he was liable to get killed, and he was told to run through a corn field and he left there and I never saw him no more.

Q. Then where did you all go?

A. Direct into Hartford.

Q. The women and children went in a hack and you walked?

A. I don't remember of anybody going in a hack. I know I walked.

Q. Your son was along with you? A. No he was gone.

Q. He came to Prairie Creek with you, did he?

A. Yes.

Q. Did you know where he was?

A. No, sir, I didn't know.

Q. Then when you got to Hartford, where did you go?

A. We went into some house there, I dont' know whether it was the mayor's office or where it was, but it was some place there.

Q. Now, those men that were there on the bluff, do you know any of them? A. Which?

Q. The men that you found with your crowd on the bluff, when you came back, did you know any of them?

2685 A. The men that had us?

A. Yes. A. No, I don't know them.

Q. I dont' mean their names, but do you know who they were?

A. I heard them call them. There was two brothers there and they said one was a preacher. I don't know their names.

Q. What kind of a looking man was this man you say you think was a preacher?

A. It seems like he was a chunky fellow. I would not be positive that the one that was chunky was the preacher. He had something tied around his head as if he had been hurt. I don't know whether he was a preacher or not.

Q. When you got to Hartford,—oh, first, describe as nearly as you can the man that you came to, that you ran within ten feet of in the woods?

A. He was a slender man with a very long mustache. It seems to me he had a light, sandy mustache. I can't remember positive. He was a slender man and had a very long mustache.

Q. When you got to Hartford what time was it about?

A. I guess it was a little after 12:00 o'clock when we got there about 12:00 o'clock or a little after.

Q. What happened to you then?

A. We stayed there at Hartford all that afternoon.

Q. What did you do?

A. Well, they carried us into a place to make a statement of some kind, to tell about it. I dont' just remember how it went off at all. I was excited at that time. My boy was gone and I dont' know, to tell the truth, about it. I expected to be killed. That is all there was to it.

Q. Who were in the room with you when you were making this statement?

A. It was just as full as it could be. I don't know who they was. The room was as full as it could be. They
2686 was crowded in there. I understood that man to be the mayor that taken that deposition, but I don't know far a fact. I just understood he was mayor of the town.

Q. Describe, as nearly as you can, what happened to you in connection with the taking of your statement?

A. Well, that is all there was to it. They were taking that deposition there.

Q. What happened? Did you sign any paper?

A. I don't remember whether I did or not. I don't think it was finished,—I ain't certain. I don't remember anything about it. I could not testify about that at all, about that statement. I was unnerved and scared and excited. I don't know whether it was finished or not. I aint' certain what was done to it. It seems like we were to go back in the afternoon and finish it up and all of the rest of the men was going to sign one, but I don't know whether it was finished or not.

Q. Was anything said to you in connection with the statement as to who started the shooting?

A. I was asked twice or maybe more, did the guards do the first shooting that morning. I didn't know who did the first shooting and I couldn't testify.

Q. You say you did not sign any statement?

A. I dont' remember nothing about it, whether it was signed or not. I tell you I don't remember.

Q. Did you read over any statement?

A. I never read nothing. As nigh as I remember, I told about what I am telling now. I told how come me. to be there—

Q. Had you finished what you were going to say?

A. Yes.

Q. When you were in the house, was anybody stand-
2687 ing guard over you?

A. We was guarding all night, people stayed at the door all night each night we were there.

Q. Did they have guns?

A. I don't remember whether they had guns or not.

Q. Do you remember anybody who was your guard?

A. A man by the name of Pattie stayed the last night.

Q. The same Pattie you have spoken of?

A. Yes, I don't know his given name.

Q. Was anything said there about Mr. Thomas?

A. Why, yes, I heard a good deal said about Mr. Thomas.

Q. By these men that were guarding you?

A. I don't know that it was by them, but it was by the men that came in the house. The house was full of men. There had to be someone to keep them away from us.

Q. What about Thomas?

A. I heard a lot of men say he ought to be killed because he went out there the second time and brought men into that place down there, Prairie Creek. I heard it several times but I don't know who said it. I was a stranger to them.

Q. Did they say anything to you there as to why,—as to the reason for all of this trouble?

A. They told me the reason about me. They told me I had ruined Tennessee and came down to Arkansas to ruin it, that the open shop workers had ruined that country and came down here to ruin this country.

Q. Then on Sunday morning they sent you back on the train, the whole guard?

A. I went to Coal Creek or started for there Sunday morning.

Mr. Drinker: That is all.

Cross-Examination

By Mr. Warrum:

Q. Did they raise money for you to go back to Coal
2688 Creek, Mr. Johnson?

A. I could not say where the money came from. Someone got us tickets, I don't know who furnished them.

Q. What was the name of the man you understood to be mayor? A. Which?

Q. The man that you understood to be the mayor of Hartford? A. I don't know what his name was at all.

Q. Was he over when your statements were being taken?

A. In the room there?

Q. Yes.

A. Yes, sir, I think he was. I ain't certain he was the mayor, but from what I heard said.

Q. He was there when your statements were being taken?

A. I think so.

Q. Did he threaten you?

A. I don't know. He was asking questions, but I don't know whether it was him or not.

Q. Do you know any one else when your statements were being taken? A. No, sir, I didn't know any of them.

Q. And you don't know who raised the money?

A. No, I don't know.

Q. Did you strike up an acquaintance with Pattie and tell him that you knew his father back in Tennessee?

A. Sir?

Q. Did you tell Mr. Pattie that you had known his father in Tennessee and had worked for him?

A. Yes, sir, I told him I knew his father in Tennessee years before that.

Q. What did he say?

A. I don't know what he said. He didn't say anything in particular.

Q. Did he curse and abuse you then?

A. Pattie never said anything to me.

Q. He never said a word to you? A. He talked to me.

Q. How did he talk to you, Mr. Johnson?

A. Just in a common conversation about the past, what we had seed.

2689 Q. Did he talk to you of Tennessee?

A. Yes, and Alabama.

Q. Did you meet a Mr. McDaniels there, too?

A. I don't know; if I did, I didn't know him.

Q. Do you know the circumstance of Mr. Daugherty going with Mr. McDaniels or Mr. McDonald?

A. Yes, they went away and stayed all night in company with each other.

Q. Did you talk with the gentlemen he went with?

A. I ain't certain.

Q. Did you hear those two people talking together, Mr. Daugherty and Mr. McDonald?

A. No, sir, I don't think I was there when they went away. They went and stayed all night and came back the next morning. I didn't know that man.

Redirect Examination

By Mr. Drinker:

Q. Were you in a calm condition during this time?

A. Sir?

Q. Were you in a calm and cool frame of mind during this time? A. When?

Q. When you were in the building?

A. I was badly excited; I wouldn't go through that again for that whole mine out there. I don't want any more experience like that and I ain't going to have any more experience like that, and I don't want any more of it.

Mr. Drinker: That is all.

Recross Examination

By Mr. Warrum:

Q. Is that the reason you joined the Salvation Army?

A. No, sir, that is not the reason,—I ain't joined the Salvation Army; I am just working for them in the industrial department.

2690 F. A. YOUMANS, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your name? A. F. A. Youmans.

Q. You are the judge of the Federal Court of the Western Division of Arkansas? A. I am.

Q. You have been for how many years?

A. Six years last June.

Q. You held that position in June and July, 1914?

A. I did.

Q. Referring to July 16th, 1914, the night before the battle at Prairie Creek No. 4, I will ask you if you received a telephone call. A. I did.

Q. At about what time?

A. My recollection is that it was between 9:00 and 10:00 o'clock at night.

Q. Will you state who the man said he was, and what was said.

A. He said that his name was McLachlan, that he was at Hartford; that some women had just came in to Hartford from the neighborhood of the Bache & Denman Mines; and my recollection is he said Frogtown, but I may however be mistaken about that, but I got the information that it was in the neighborhood of those mines. He said that the women reported that their houses had been shot into by some men at these mines, and asked me to have the men arrested by the marshals who were there. I said to him there was no marshals there, and his reply to that was "Is that so?" I told him, "No"; I understood the marshals had been withdrawn the day before, or that day, and I told him even if they were there, I had no authority to order marshals
2691 to make an arrest; that the only way in which they could make an arrest would be to have placed in their hands a warrant for a certain individual, and in order to obtain a warrant a complaint must be made before the proper official, having authority to issue the warrant. I then told him that if he knew of any facts, or anybody else there knew of any facts that in his judgment warrant the arrest of any of the men it was his duty to go before a magistrate and make complaint as the law required, and have a warrant issued, and put it in the hands of the state officials, so that arrests could be made. He then said that the officers were not willing to make an arrest because of the injunction. My reply to him was that the injunction did not protect any man at those mines from the violation of the law; that that injunction simply protected the property and the men who were there against assault and attacks from other parties, but did not protect them in any degree in regard to a violation of the law, and that any state officer who had authority, and armed with a warrant, had a perfect right to go and make an arrest, whenever he was armed with that authority.

He then asked that I call up the sheriff and tell him to make the arrest, and to advise him of his rights. I said, "I won't do that, Mr. McLachlan; in the first place I have no authority to direct any state officer what he shall do or the sheriff; in the second place, the sheriff has not asked me to give him any information in regard to anything, and in the third place, it is not necessary, because the sheriff knows his duties and the extent of his authority just as well as I do.

But, if the sheriff, or any constable, after he has a warrant in his hands, desires any information from me as to the execution of the warrant, and will apply to me for it, I
2692 will give him the information gladly;" Now, that was about the extent of the conversation.

Q. Do you know who McLachlan was?

A. Well, the information that I had with regard to the identity of Mr. McLachlan was simply such as I had picked up by reason of his being present in the court room here when certain proceedings were going on. In May, I think it was, and then during July. I never met McLachlan personally; I just know of a Mr. McLachlan being present, and getting the information in some way that that was Mr. McLachlan, and that he was some officer of the United Mine Workers. That is all I know.

Q. Some time previous to that, Judge Youmans, did you receive through the United States Mail a letter?

A. No, not previous. It was after that that I received the letter; this was on the night of the 16th.

Q. When was that letter received by you?

A. My recollection as that it was on the 27th of July.

Q. Do you know what became of that letter?

A. Yes, sir.

Q. Will you state?

A. The letter was turned over to Mr. Hull, representing the Attorney General—yourself—and a postoffice inspector whose name I have forgotten, and my recollection is a Mr. Harris, who was connected with the Secret Service of the United States. My recollection is that these three men came into my room and requested that I deliver the letter to the postoffice inspector, and my recollection is that I gave it to him.

Q. Have you ever seen the letter since?

A. I never have.

Mr. Hull: Now, if the Court please, having ac-
2693 counted to this extent at least for the loss of the original letter, we would like to withdraw this witness and make proof of a copy.

The Court: On the theory that this is sufficient foundation for the original letter?

Mr. Hull: Yes, sir, it was handed to either myself or men in my presence, and I can identify a copy of it.

The Court: Very well.

(Witness withdrawn.)

2694 ROGER B. HULL, called as a witness on behalf of the plaintiffs, being first duly sworn, [testfierd] as follows:

Direct Examination

By Mr. McDonough:

Q. Your name is Roger B. Hull? A. Yes, sir.

Q. Mr. Hull, in the year 1914, were you here in Fort Smith at the time that this matter of this letter came up?

A. I was.

Q. In what capacity were you here?

A. I was here as a special assistant to the Attorney General of the United States.

Q. You heard the statement of Judge Youmans, as to a letter being turned over. What became of the letter?

A. It was used before the Grand Jury, and I think was sent back to the Department at Washington. I asked the Department for that original, and they have been unable to find it.

Q. I show you what purports to be a copy of a letter, which appears as Plaintiffs Exhibit 59, and will ask you to examine that, and see if that is a copy of that letter, regarding which Judge Youmans testified.

A. Exhibit 59 is the original of the indictment returned in this court by a grand jury—

Mr. Warrum: (interrupting.) If the Court please, the defendants separately object to his giving an interpretation of the exhibit, about which he was not asked, and construction of the exhibit about which he was not asked.

The Court: It is simply for the purpose of identification. Objection overruled.

2695 To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. The indictment is signed by myself, as special assistant to the Attorney General, and a part of the indictment consists of this letter, a copy of this letter, and I copied this letter from the original handed to me, or to the postoffice inspector, and compared it with the original before signing the indictment on the next page; and before it was returned by the Grand Jury.

Q. Is that then a true copy of the letter?

A. It is.

Mr. McDonough: We now offer in evidence Exhibit 59.

(Witness excused.)

2696 F. A. YOUMANS, recalled as a witness in behalf of the plaintiffs, and having been previously sworn, testified further as follows:

Direct Examination

By Mr. Hull:

Q. I hand you, Judge Youmans, Plaintiffs Exhibit 59, which contains what purports to be a copy of that letter, and I will ask you to read that, and see if you remember that that is in substance a copy of the letter you received.

A. My recollection is that this is an exact copy.

Q. Is an exact copy? A. Yes, sir.

Q. Did you receive that letter through the United States Mail? A. I did.

Mr. Hull: I want to read this letter to the jury.

The Court: Let it be read into the record, so that the whole fact will be presented.

Mr. Hull: July 27, 1914—

Mr. Warrum: If they offer it in evidence, we would like to object to it.

The Court: It was offered and received some time ago.

Mr. Warrum: I understood that it was identified, but not offered.

The Court: Yes, it was offered.

Mr. Warrum: We would like to have an objection.

The Court: Let the record show the defendants object to the offer.

Mr. Warrum: I tried to follow as close as I could.

The Court: I understand.

2697 Mr. Warrum: Now, the defendants separately object to the introduction in evidence the letter which we have not yet seen, for the reason that this is an anonymous letter, and not signed by anyone, and no explanation has been made now, and no offer of explanation has been made by plaintiffs counsel showing any connection between any of the defendants in this case, and the letter, because it is a letter written after the culmination of the conspiracy complained of, and because no proper foundation has been laid for the introduction of the copy.

Mr. Hull: Perhaps I can ask the witness another question and correct what may be a lack of foundation.

The Court: Very well.

Q. (By Mr. Hull.) Judge Youmans, did one James G. Crossley plead guilty before your Honor in this court, in this court room, at some time subsequent to the date of this letter, under this indictment, for writing and sending this letter to your Honor? A. He did.

Mr. Hull: We re-offer the letter.

Mr. Warrum: We renew the objection for all the reasons given, and because the man that pleaded guilty, as I am informed, is not a defendant here, but is a crazy man, and it is not competent.

Mr. Hull: I object to that statement, they can prove that he is crazy at the proper time.

The Court: That portion may be stricken from the record. He is a defendant, or a member of the Union?

Mr. Hull: I think he is named in the bill of complaint; he is a member of the union.

The Court: The objection is overruled, and perhaps I ought to call defendants' counsel attention to the view
2698 of this complaint, that I have not emphasized, and that is that the complaint does not stop with the destruction of the building. On page 22 of the printed copy that defendants' counsel furnished me, there begins a recital of facts covering dates subsequent to the destruction of these mines, and alleging even after the receivership was appointed, large preparations for the mining of coal, and for the entering in a greater measure into interstate commerce, and they allege interference with that commerce by threats and intimidation, proceeding over to pages 24 and 25, and to page 26, and allege that these defendants, by reason of the acts recited in the complaint, created a continuous atmosphere of terrorization, which effectively prevented any persons from entering or continuing in the employe of said companies, through fear of harm or violence to their person or property from defendants; and allege that is one of the causes of damage, so that the opposition that occurred after the destruction of property is naturally eliminated. This refers to a date subsequent to the destruction of the property, by fire at the mine. The objection will be overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull (Reading): "July 27, 1914.

Judge Youmans,

Dear Sir:

You know the acts you have decided upon. As a warning friend we caution you to be more considerate upon the administration of your decisions. You are notified to comply with the requirements of your office. If such is not
2699 compiled with very shortly there is likely to be an unexpected change between your soul and fleshly temple, and you won't know the day or time or by what means such will take place. Still we don't want to act cowardly but give you a little time to act differently. At any rate you will have a little time for future preparation for that place called Heaven. You are weighed in the balance and found wanting. There is a great change soon to happen.

(Signed) FOREWARNED.

This is a barking dog and if teased much longer will bite.

(Signed) PRESIDENT OF COMMITTEE."

The Court: I think gentlemen, that in the connection that exhibit may be considered as read into the record, and the exhibit withdrawn, the fact that it is an indictment.

Mr. Warrum: The record shows that we objected to the reading of it into the record?

The Court: Certainly, but the Court is doing that with the idea that the indictment itself might be introduced as evidence here, and the jury would not understand its effect, and I simply want to limit the exhibit to the letter itself.

Q. (By Mr. Hull.) I will ask you one more question, Judge Youmans. What proceedings, if any, in connection with these mining troubles, were pending at the time that you received that letter, before your Honor?

A. Certain contempt proceedings.

Q. Do you remember the date upon which your Honor rendered the decision in the contempt proceedings?

A. My recollection is it was about the first of September following.

2700 Cross-Examination

By Mr. Warrum:

Q. I understand that the author of this anonymous letter pleaded guilty before your Honor later?

A. He did.

Q. What was his name? A. His name was Crossley.
Q. Do you remember his first name?
A. I don't remember it now.
Q. James Crossley? A. I think that was it.
Q. Did he plead guilty, or was there some evidence introduced?
A. There was no evidence, he pleaded guilty. That is my recollection. Mr. Covington represented him, and he can probably refresh my memory, but my recollection is there was no evidence introduced, but I don't remember. If there was any evidence introduced, but I don't think there was.
Q. He was sentenced to prison?
A. He was sentenced to jail, my recollection is for three months.

(Witness excused.)

2701 A. M. CHITWOOD, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. What is your full name, Mr. Chitwood?
A. A. M. Chitwood.
Q. Where do you live?
A. I live at Atoka, Oklahoma, now.
Q. Where were you living in 1914? July?
A. In Fort Smith.
Q. Were you appointed a United States Deputy Marshal sometime in June? A. Yes, sir.
Q. What were your duties?
A. Well, as I understood them they were to go down and kind of keep place at a mine down here in Sebastian County.
Q. Did you go down there? A. Yes, sir.
Q. What, if any, difficulty did you encounter in securing board and room down there?
A. Well, we didn't get any except at the company.
Q. You could not find anyone that would take you in?
A. Yes, sir.
Q. Did you make efforts to do that? A. Yes, sir.
Q. In what town? A. In Prairie Creek.
Q. Do you remember, Mr. Chitwood, the occasion of a man being brought in there by the name of Nick Berkell, one evening about July 5th or 6th?
A. Yes, sir.
Q. Will you state what occurred on that evening, what you saw in that connection?

A. I don't know the time of day, I don't remember just what time, but it was after dark.

2702 Q. You were serving as United States Marshal at that time?

A. Yes, sir. He was brought in there and there was quite a crowd gathered, and after some time,—after a little bit at least, the crowd was sent back again, kind of on the outlook, and he was left in there with me.

Q. Who left him with you?

A. Well, the crowd left him with me. Mr. Holt told me to see that he was not abused.

Q. Who was Mr. Holt? A. A Marshal.

Q. J. L. Holt? A. I don't recollect.

Q. Jim Holt? A. Yes, sir.

Q. Now, state just exactly what Mr. Holt said to you.

A I don't remember that I can tell you exactly what he said, but I can tell you as I remember it.

Q. That is all I want.

A. As I remember, after this man was brought in there, and the crowd, Holt kind of drove the crowd out, or ordered them out, and they kind of looked to him as one in authority, and they went out, and he and this man got into a little conversation. This man recognized Holt, he had met him before, and Holt remembered him, and he stated to this man "You stay here with this man," and after he started away, he came back to me and said "Don't let anybody abuse this man."

Q. And what did you do then?

A. Well, after a little bit, I went from where I was at that time to a tent where I stayed, and this man went with me, and stayed at the tent with me.

Q. Did you set there in front of the tent with him for some time? A. Yes, sir.

2703 Q. State what, if any, conversation you had while sitting there in front of the tent with him.

A. I don't remember all of the conversation, but we talked while sitting there.

Q. How long did you set there with him?

A. I cannot tell you how long that was, but it was during the time that the crowd was off to receive the attack; they expected an attack.

Q. What did Berkell say to you about an attack, if anything?

A. In our conversation, he told me that he saw, or heard a bunch of men above him on the hill, and said that they were from the inside there, and I told him I didn't think they were, that I didn't think the men were out, that I didn't know of it, and he said if they were union men, I expect, I don't remem-

ber the words he used, but I expect that I impressed him with the idea that they were union men coming to attack, that was what we thought, that was the view I had, and I allow that I impressed to him that way.

Q. What did he say about that?

A. He said if they were union men that he heard out there that place would be torn up in a few minutes.

Q. Did he say anything about where he wanted to go or to get out of the way of that attack?

A. Yes, sir, after he had expressed himself that way, there was a low place there by the tent, and he said if they commenced anything "I will get in there." There was a rather low place right close to where we were sitting.

Q. How long did you set there with him?

A. I don't remember how long, I couldn't say.

Q. What was the last you say of him that night?

2704 A. He was still there when I went to bed.

Q. In front of your tent?

A. Yes, sir, out a little ways in front.

Q. Where did you see him the next morning, if you saw him?

A. He was still out in front of the tent, a little ways asleep.

Q. How far from the tent?

A. I can't remember, maybe twenty-five, twenty or twenty-five feet.

Q. And who, if anyone else, was around there anywhere near him?

A. There was a man off to my right from him, I don't remember just how far. A man that I thought was Charley Cheek, but I don't know whether it was or not.

Q. How far was he from Mr. Berkell?

A. Fifteen or twenty feet.

Q. Was he also asleep? A. Yes sir, he was asleep.

Q. As far as you saw anything that night, Mr. Chitwood, you did not see or hear of Nick Berkell sitting there, or lying there inside or outside of a tent, and being punched in the ribs with a gun by Charley Cheek?

A. I never heard of it.

Cross Examination

By Mr. Covington:

Q. Mr. Chitwood, what were your duties down there as United States Marshal?

A. As I understood it, I stated before, as I understood it, it was kind of to look after the injunction, and prevail with the people to obey the orders of the Court.

Q. Now, you say Holt, Jim Holt turned this man Berkell over to you?

A. I don't know that you would call it turned over. They came in there with him, the crowd gathered in, and when I went up to where they was, I was not with the crowd
2705 when they came in, but when I went up to where they was, pretty soon after I went up, Holt ordered the men out that were on the inside, and most of them went out and went back.

Q. How many were in the tent at that time?

A. In the tent?

Q. Yes. A. They were not in a tent.

Q. Where were they? A. In front of the store.

Q. In front of the store? About how many were gathered around Berkell?

A. As well, as I remember there must have been thirty or forty men.

Q. Armed? A. Some of them were.

Q. Most of them?

A. Yes, sir, I expect most of them were.

Q. Mr. Chitwood, what did you hold Berkell for, what were you sitting down there holding him for?

A. As I understood I was keeping him in there to keep from being abused.

Q. That you were just keeping him there to keep him from being abused?

A. That is the way I understood it.

Q. There were no men abusing him?

A. There was not just then, but the conversation that happened just before that signified that there were some there that might do it, if they had a chance.

Redirect Examination

By Mr. Hull:

Q. The telephone had been cut that night?

A. Just a few minutes before.

Q. A few minutes before he was brought in? A. Yes, sir.

Q. How old are you Mr. Chitwood? A. 73 years old.

Q. 72? A. 73.

(Witness excused.)

2706 WILL BOHANNAN, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Will Bohannan.

Q. Where do you live? A. Spadra, Arkansas.

Q. Now, talk so that everyone can hear you.

A. Spadra, Arkansas.
Q. What is your business? A. Digging coal.
Q. You are a union man? A. Yes, sir.
Q. Were you working at the Bache-Denman Coal Company in the spring of 1914? A. Part of it.
Q. Do you remember the occasion of your going to the Midland station with Levi Brown and Charley Cheek on or about May 18th?
A. I don't remember the date, I remember of going.
Q. You remember going there and having some rocks thrown at you? A. Yes, sir.
Q. Now, without going into details of that incident, Mr. Bohannan, will you state what occurred after you had driven off a little ways, with relation to your taking your gun out from the wagon?
A. We had not gone very far until the rocks were thrown, and I stopped the team, and the crowd began to gather down the road, and I took the gun out of the wagon from the under the seat, and set it down by the side of the wheel, and Levi Brown and Charley Cheek, I believe, were the ones in front.
Were you arrested? A. Yes, sir.
Q. Had you pointed your gun at anybody?
A. I had not.
2707 Q. Offer to shoot anybody? A. No, sir.
Q. Were you fined for what you did that day?
A. Yes, sir.
Q. How much? A. $100.00.
Q. Were Brown and Cheek also fined? A. Yes, sir.
Q. The same amount? A. Yes, sir.
Q. Who prosecuted you in that case?
A. Paul Little, I believe was the man.
Q. Do you remember what he said when he got up to open the case? A. I think I do.
Q. What did he say?
A. When he opened the case, he made the remark, he said there was not much to the case, he said that the union men had laid their shovels down there, and the scabs had picked them up, and taken the bread and meat out of the union men's wives and children's mouths, that was the remark to the best of my knowledge.
Q. That was in open court at the time that you were tried for that offense. A. Yes, sir.

Mr. Hull: You may cross examine.

Cross Examination

By Mr. Covington:
Q. How long have you been in the union, Mr. Bohannan?
A. Since I worked at No. 4.

Q. When did you get into the union?
A. Oh, I belonged to it about eleven years, I guess, before then, before I went to work down there.
Q. I mean since the trouble at Prairie Creek, when did you go back to the union?
A. Something like a year, or a little better, after that, when they organized down at Jamestown.
Q. When the men were organized at Jamestown?
A. Yes, sir.
2708 Q. Down in Johnson County? A. Yes, sir.
Q. That is known as the Pennsylvania Mining Company?
A. No, sir, Joe King. I don't know whether it was the Pennsylvania or not, but I was working at King's at the time that we organized.
Q. You were working at the King mine?
A. Yes, sir.
Q. The King mines are operated open shops?
A. They are now, yes, sir.

Witness excused.

2709 E. G. CASTELL, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. State you name. A. E. G. Castell.
Q. What is your present position?
A. I am agent for the Frisco at Huntington.
Q. Have you, in reponse to a subpoena duces tecum, produced here this morning some records of your company, showing whether or not the mines under control worked on April 6th and July 17th? A. Yes, sir, I have the records.
Q. These records are kept under your control and custody? A. Yes, sir.
Q. Will you state whether or not Nos, 3, 5 and 6 Central and the Cross mines worked on April 6th?
A. No, sir, they didn't work.
Q. Do your records show why they didn't work?
A. Yes, sir.
Q. Why?
A. Account of miners' demonstration, the record shows.
Q. Will you turn to your records for July 17th, and state whether or not No. 2 worked that day?
A. The 17th,—No. 2 worked two hours and lost six.
Q. Does it state why? A. The men came out.

Q. State whether or not No. 3 and 6 worked that day?
A. They did not work.
Q. Why not? A. No men.
Q. No men? A. No, sir.

Q. Were those mines that you have referred to union
2710 mines? A. Yes, sir.

Q. Did you bill the coal, I believe as a part of your duties, out from the Coronado mine, did you not?
A. Yes, sir.
Q. That was one of the Bache-Denman mines?
A. Yes, sir.
Q. Can you state, giving the best of your recollection, what per centage of coal shipped by the Coronado Coal Company went into interstate commerce?
A. Well, practically all of it.

Mr. Warrum: Now, the defendants severally object to this, because it calls for a conclusion as to the figures involved, and a legal conclusion as to each shipment, and an interpretation he puts upon the character and class of shipment.

The Court: Perhaps the foundation is not sufficiently laid to show that this witness knows what interstate commerce is.

Mr. Hull: I will ask it in a different way.

Q. You state that you billed the Coronado shipments out over your lines? A. Yes, sir.
Q. Will you state what per cent of that coal which you billed went outside of the state of Arkansas?
A. Well, you see,—

Mr. Warrum: Now, the defendants object, because the records would naturally be the best evidence, and calling for a conclusion, and not binding upon the defendants.

The Court: I think if the witness knows he may state, although of course it is not necessarily a question of the best evidence, I think. If there is a record, that would be the best evidence of it. The objection will be sustained.

To which ruling of the court the plaintiffs, and each
2711 of them, then and there duly excepted and still except.

Mr. Hull: You may cross-examine.

Cross-Examination

By Mr. Covington:

Q. Have you your car sheet showing the number of cars furnished to these mines each day?

A. Yes, sir, this record here shows it.

Q. And when there were no cars you assign the same reason on your sheet that you have there

A. There are two causes for mines not working. This report shows. You can examine the record, if you want to, or I can explain it to you better. It is a cipher report. It is a telegraphic report, and made in cipher to shorten it. Now, here is two columns, "Hours Lost By Shutdown", and the cipher for want of cars is "AR", and the cipher for other causes, is, "RA", and both on April the 6th and July 17th, the causes were not for cars, but for other causes, and they were here recorded in the remarks column.

Q. Now, between those dates,—

The Court: Let him finish.

Mr. Covington: I beg your pardon, I thought he had finished.

The Court: I didn't get the last of that answer.

A. I say this report is made in cipher, it is a telegraphic report,—

The Court: I got that part of it.

A. (continuing). And when the mines are idle for want of cars, it shows under the cipher "AR" and when they are idle for other causes, it comes under the cipher "RA", and on April 6th the mines, all of the mines were idle for other causes, which is "RA", and on July 17th it is the same.

2712

Q. Where do you get your information on which you base that cipher record?

A. Well, it was made in a measure from what is called the operators' 5 P. M. Report. They give us the number of cars loaded, and the tonnage, and the cause of the mine being idle.

Q. And you transcribe that into the record?

A. Yes, sir, part of that. The Operators' 5 P. M. Report. This report is made in a measure from the Operators' 5 P. M. Report.

Q. Did you make that record?

A. No, I didn't make it personally, the clerk made it.

Q. You didn't make it? A. No, sir.

Witness excused.

2713 D. VAN HECKE, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. D. Van Hecke.

Q. What is your present position?

A. Superintendent of the Rock Island Railroad.

Q. With offices at Haileyville?

A. Haileyville, Oklahoma, yes, sir.

Q. Have you, in response to a subpoena duces tecum, produced records of your company, showing whether or not the mines located on the lines of the Rock Island worked on April 6th and July 17th? A. I have.

Q. Will you state whether or not on April 6th Central No. 4 and the Bolen mine and Slankard mine and Harbuckle mine worked? A. They did not.

Q. Can you state whether the record shows on what account they did not work? A. Other causes than for cars.

Q. And is there any notation there to show further why it was? A. No men.

Q. Referring to July 17th, will you state whether those same four mines worked? A. They did not.

Q. And is there anything in the record showing why not?

A. Causes other than for cars, and in the margin the notation, "Labor Trouble".

Q. Were all these four mines union mines?

A. I don't know.

Q. You don't know whether they were operated with union labor or not? A. No, sir.

Q. Do you know as to any one of them, whether they were or not? A. No, I do not.

Witness excused.

2714 JAMES R. COLE, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr Hull:

Q. What is your full name? A. James R. Cole.

Q. Where do you live? A. Ft. Smith.

Q. How long have you lived here?

A. This last time I have lived here a little over five years, it will soon be six.

Q. Were you commissioned a deputy United States marshal under Marshal Parker in October 1914, to go down to Prairie Creek? A. Yes, sir.

Q. You were there on October 28th? A. Yes, sir.
Q. Will you state what occurred on that night?
A. About 12:00 o'clock in the night, there were 17 of us there, I think, myself and Mr. Atkisson,—
Q. (interrupting). Two marshals? A. Yes, sir.
Q. And the rest were employes? A. Yes, sir.
Q. That had been down there to operate the mines?
A. Yes, sir, they had gone down there to work.
Q. When did you get there?
A. We got there, let's see, that was on the 18th, was it not? We got there about the 15th.
Q. How many days had you been there before this occurred, when you were run off there?
A. Two days and night,—one night we stayed in Midland, and went down there the next day.
Q. You had been there two days?
A. About two days and nights, yes, sir.
Q. What occurred that night about 12 o'clock?
A. About 12 o'clock we heard the crowd all around the place, and in the woods and shooting at the houses.

2715 Mr. Warrum: The defendants separately object to the introduction of evidence occurring in October, for the reason previously given.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. State what occurred?
A. Well, there was about, I don't know how many shots was put in,—there must have been over a thousand shots fired into the houses.
Q. Had you built up any protection there for yourselves, in this house?
A. Yes, sir, the boys put up some boiler plates, or some kind of steel stuff on the inside, and stood them up against the wall.
Q. And did you leave there soon after that shooting began?
A. Yes, sir, I left there about one o'clock, I guess.
Q. Had there been any other deputy marshal there early in the day?
A. Yes, sir, Mr. Sid Johnson was there in the afternoon, and stayed until about five o'clock, I guess.
Q. After you left that house, did you look back and see some fire in that vicinity?

A. Yes, sir, I was going to tell you. I went over the ridge from where we were, and looked over toward the creek, over there, where the mine was, and I stayed over there on the other side of the bluff that night, the balance of the night. I could see fire above there, they would fire a house, they would fire a volley of shots at it and then they would shoot around everything, and then you could see the fire.

Q. Were you armed that night, Mr. Cole? A. Yes, sir.

Q. What guns did you have?

A. Winchester and a six-shooter.

Witness excused.

2716 SID JOHNSON, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Sid Johnson.

Q. Where do you live? A. I live at Muskogee now.

Q. What is your present business?

A. Special agent of the M. O. & G. Railroad.

Q. Were you commissioned as a deputy United States marshal in October, 1914, to go down to Prairie Creek mines?

A. Yes, sir.

Q. Did you go down with Mr. Cole and Mr. Atkisson?

A. No, sir, they were there when I got there.

Q. You got there on what day, if you remember?

A. Something like about the 26th of October.

Q. You were there on the day of the night in which there was some trouble over there? A. Yes, sir.

Q. When did you leave the mine?

A. I left there just about dark, I think it was.

Q. Why did you leave there?

Mr. Warrum: The defendants desire to separately object to the evidence occurring after the institution of the suit.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. What was the question?

Q. Why did you leave there?

A. Well, I had different reasons for leaving. In the
2717 first place, after I got down there,—I got down there that evening, and after taking in the situation,—

Q. (interrupting). Speak so we can hear you?

A. I got there that evening, before this difficulty happened, and after taking in the situation, and one thing and another around there, I decided I didn't want to stay, and I walked to Hartford and came home.

Q. You walked to Hartford? A. Yes, sir.

Witness excused.

2718 J. N. HAMILTON, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. Your name is? A. J. N. Hamilton.

Q. Where do you live?

A. My family lives here, I am at Salisaw, at present.

Q. Oklahoma? A. Yes, sir.

Q. Were you employed at the Bache-Denman mine in July, 1914? A. Yes, sir.

Q. And again in October? A. Yes, sir.

Q. Referring now to the 6th day of July, do you remember the time when a man named Nick Berkell was brought into camp? A. Yes, sir.

Q. Will you state where you were stationed that night.

A. Yes, sir, watchman at the front.

Q. At the front gate? A. Yes, sir.

Q. State what occurred with relation to some shooting, and your part in it?

A. Well, as well as I remember, there were two of the guards sent out to guard a telephone pole, and while they were out there, there was a bunch of men came up on the railroad, right close to my station, and began firing over at the camp.

Q. That was No. 4? A. No. 4; and I opened up on them.

Q. You shot? A. About a couple of times.

Q. What were you shooting at?

A. I was shooting at the bunch, from the flame of their guns.

Q. Did Mr. Langford come out there soon after that?

A. Yes, sir.

2719 Q. You shot twice, you say? A. Yes, sir.

Q. Did Mr. Langford tell you not to do any more shooting?

A. Mr. Langford came out to me and said, "Be careful, there are some of our men out", and I told him I knew that.

Q. Do you know how soon after that Nick Berkell was brought into camp? A. I suppose about 15 minutes.

Q. How many men were there in this crowd that you saw out there that did the shooting?

A. I can't tell, but it looked like a pretty good bunch, 10 or 12.

Cross-Examination

By Mr. Covington:

Q. When you were shooting into that crowd, Mr. Langford came down and told you not to be shooting into that crowd out there, that that was his own men?

A. No, sir, he didn't tell me that, he said to be careful, we had some men out.

Q. But you were shooting in that direction, and he came out and told you to be careful?

A. No, he didn't tell me that, he said to be careful.

Q. He did tell you to be careful? A. Yes, sir.

Witness excused.

2720 DR. E. B. JONES, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. Please state your full name? A. E. B. Jones.

Q. You are a practicing physician at Hartford?

A. Yes, sir.

Q. How long have you been practicing there, Doctor?

A. About 14 years.

Q. Do you remember the night of October 31st, 1914, when you witnessed some trouble at the Hartford station when Earnest Nein was there?

A. Yes, sir, I remember being down there.

Q. Will you state what occurred at the Hartford station, when it was and who was there and what occurred?

Mr. Warrum: The defendants separately renew their objection to the testimony of events occurring after the institution of the suit, for the reasons given.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. You may answer. A. Tell about what occurred?

Q. Yes.

A. I don't know that I remember very much. I was standing in the station, in the depot, and someone called my name.

Q. Who was that that called you? A. Nein.
Q. Earnest Nein? A. Yes, sir.
Q. Do you know whether he had been arrested that day by deputy marshal Black?
A. I didn't know of my own knowledge; I thought so; they said he had.
2721 Q. State what Earnest Nein said?
A. He just called me to come out there, and I walked out there and he said they were trying to keep him from going to Ft. Smith, and he had not done anything, and he would rather go on in.
Q. You knew Earnest Nein, he was a friend of yours?
A. Yes, sir.
Q. Who had hold of him, if anyone?
A. Well, I believe, as I remember now, the best I remember, I think it was Mr. Layton and Will Reed, just had a hold of him.
Q. Was that Oscar Layton? A. Yes, sir.
Q. And Will Reed? A. Yes, sir.
Q. Do you know where they worked?
A. No, sir, I don't.
Q. Do you know whether they worked at the mines there?
A. I don't know where they worked.
Q. Did they have guns with them?
A. Yes, sir, they had guns with them.
Q. Did you see anyone else there in that crowd?
A. Quite a crowd.
Q. Were there any other men with Oscar Layton and Will Reed?
A. No, sir, about the time that that occurred, about the time I stepped out, the marshal stepped up and said,—
Q. (interrupting). Who was the marshal? You mean the city marshal?
A. Yes, sir, Cell Goddard, and he said, "Boys, come with me a minute, I want to talk to you"; and they walked off to the west of the depot.
Q. Who walked off with him?
A. These men that were standing there by him.
Q. Who were the men?
A. The men that were standing by him, there were about four, I believe.
Q. Who were those four men?
2722 A. The two I mentioned a while ago, Will Reed and Layton and John Champion, and I took it to be Branch; he had a mask over his face, and I wouldn't be positive.
Q. What is his first name?
A. They call him D. Branch.

Q. Dave Branch? A. Yes, sir.
Q. And did the United States marshal go over there to talk to them?
A. I didn't see him, he was standing in the depot.
Q. You left before any trouble occurred on the car?
A. Yes, sir, I didn't see anything.
Q. Do you know what Earnest Nein's occupation was?
A. Yes, sir, he was a miner.
Q. A union miner? A. I don't know.
Q. Where did he work? A. Central.
Q. No. 4? A. Yes, sir.

Cross-Examination

By Mr. Covington:
Q. Did you see Nein again that night?
A. I don't think I did.
Q. To refresh your memory, didn't he and Sandy Robinson, two of the men taken away from the marshal, take a car in front of your place and try to catch that train over at Midland and come over here?
A. If they did, I didn't see them.

Witness excused.

2723 JOHN H. HAYDEN, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. What is your name, Please? A. John Hayden.
Q. You are the president of the Hayden Sporting Goods Company at McAlester, Oklahoma, are you? A. Yes.
Q. You held that position in June and July, 1914?
A. Yes.
Q. Have you brought with you here, in response to a subpoena duces tecum, your cash book or day book showing a certain sale or sales to Fred Holt, secretary of District 21, United Mine Workers of America, made in June, 1914?
A. Yes.
Q. Will you turn to that day book, to the page where those bills are set out? A. What date was that?
Q. That was June 17th, page 198 in your book.
A. Yes, sir.
Q. First, Mr. Hayden, will you state who bought these goods, who ordered them? A. Mr. Fred Holt.
Q. Do you know him personally? A. Yes, sir.
Q. On June 17th, what goods did he buy of you?

A. Why, rifles and cartridges.
Q. Will you state how many rifles he bought from you?
A. He bought nineteen and nine.
Q. What kind were those?
A. They were 45-70 Springfield rifles.
2724 Q. Those were the old government Springfield rifles?
A. Yes, old discarded government guns.
Q. What other guns did he buy that day?
A. He bought two 25 calibre Remington Automatic rifles, three 30 calibre and 4 35 calibre.
Q. How much ammunition did he buy?
A. He bought 50 boxes of 45-70 cartridges, 20 in a box; 10 boxes of 25 and 15 of the 30 calibre, and 20 boxes of 35.

The Court: How many does a box contain?

A. 20.
Q. (By Mr. Holt) 20 cartridges?
A. Yes, sir, 20 cartridges.
Q. Will you state where those goods were shipped?
A. They were shipped to Hartford, Arkansas.
Q. Do you remember to whom? A. Oscar Layton.
Q. Either on the next day or two days later did you sell some more guns or ammunition to Mr. Holt? A. Yes, sir.
Q. State what you sold and when it was.
A. Two 38 calibre automatic pistols and two boxes of cartridges for them.
Q. That amounted to how much?
A. That amounted to $34.50.
Q. And on June 17th have you overlooked two more items you have not read?
A. June 17th there was one box of 30 Springfield army cartridges and three and one-half boxes of 30 cartridges.
Q. Do you remember how those goods were paid for, Mr. Hayden? A. Yes, sir.
Q. Will you state what you received in payment for them? A. A United Mine Workers check.

Mr. Hull: I will ask that this check I now produce
2725 be marked Plaintiffs Exhibit No. 60.

Q. I show you, Mr. Hayden, Plaintiffs Exhibit No. 60 and ask you if you have ever seen that check before?
A. Yes, sir.
Q. Was that the check received by you from Mr. Holt in payment for these guns and ammunition? A. Yes, sir.

Mr. Hull: We offer this in evidence, Plaintiffs Exhibit No. 60.

Mr. Covington: No objection.

Mr. Hull (reading):

"United Mine Workers of America, District 21. No. 76

F. W. Holt, Secretary-Treasurer.

McAlester, Oklahoma.

McAlester, Oklahoma, June 30, 1914.

Pay to the order of Hayden Sporting Goods Company, $411.99 Four hundred eleven and 99/100.....Dollars.

UNITED MINE WORKERS
OF AMERICA, District 21.

F. W. HOLT, Secretary-Treasurer.

Countersigned P. R. Stewart, President.

Drawn on the Oklahoma State Bank, McAlester, Oklahoma."

Q. This is endorsed by you? A. Yes, sir.
Q. Mr. Hayden, when were you subpoenaed in this case?
A. I don't know—about three weeks ago.
Q. During this last three weeks have you received certain letters regarding your testimony in this case?
A. Why, I have received some letters, yes.
Q. From whom were those letters, if you know?
A. I cannot absolutely say. One I find out was from yourself. I received a letter from you and I don't know, but I think I received letters from the other attorneys too.
2726 I don't know, I could not say; from someone connected—I could not say positively because I did not read any of them.
Q. You did not even read my letter, did you?
A. No, sir.
Q. But your best impression and best recollection is that some of those letters were signed by attorneys for the Union? A. I could not state.
Q. What is your best recollection?
A. Well, I absolutely could not say.
Q. State whether or not some man has come to see you within the last three weeks in regard to this case.
A. Not within three weeks.
Q. When was it?
A. It was within the last three months or four months.
Q. What did he say to you?
A. He wanted to know about this.

Mr. Neal: If your Honor please, we think these parties should be identified.

The Court: The objection is sustained, it is well taken.

To which ruling the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. What did he say to you as to who he was?
A. Well, he said he was representing the defendants in this case.
Q. Did he give his name?
A. No—I think he did give me a card.
Q. Have you that card? A. No, sir.
Q. Have you it in McAlester? A. No.
Q. Will you state what he said to you?

Mr. Neal: If your Honor please, we object unless there is a better identification than a mere stranger coming
2727 and claiming to represent—

The Court (interrupting): Just made your objection. It is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Hull: That is all.

Cross-Examination

By Mr. Covington:
Q. Mr. Hayden, you testified in the contempt case before in this court room, didn't you?
A. No, sir, I did not. I testified before the Grand Jury was all.
Q. Weren't you here? A. Sir?
Q. Didn't you testify here before Judge Youmans?
A. No, sir, this is the first time I have been in the court room.
Q. Didn't you bring your bills over here and introduce them and put them in the record?
A. I absolutely did not.
Q. You did not? A. No, sir.
Q. Did you get any letter from Covington and Grant about this matter? You said you had something from some attorney.
A. I cannot say, just as I stated before.
Q. Don't you know that you did not get any letters from us and never have had a line from us at all about it?

A. I don't think I did, not that I know, because any letter I got and anyone I talked to concerned this case—I didn't talk to anyone.

Q. Did you ever speak to either one of us? A. No, sir.

Q. You do not know either of us? A. No, sir.

Q. Am I the man that came to you? A. No, sir.

2728 Q. On the 6th of July, eleven days before this battle, those guns were shipped back to McAlester; weren't they? A. Why, I don't know—no, sir.

Q. Didn't Fred Holt take you up there and show you the boxes and ask you to take them back and pay him his money? A. No, sir, he did not.

Mr. Covington: That is all.

(Witness excused.)

2729 Mr. Hull: If the Court please, we offer in evidence the deposition of J. K. Thrasher, taken at Drumright, Oklahoma, on the 23rd day of June, 1917, both sides being represented by counsel. If the Court please, I think I shall shorten this deposition. Mr. Thrasher covers in detail the riot of April 6th, and I feel it might be an imposition on the jury and on the Court to cover that again, and I will omit, therefore, about twelve pages at the beginning of the deposition, at the first of his deposition.

The Court: Use your best judgment.

Mr. Hull: Beginning the first question on page 13. (Reading.)

"Q. Will you state the names of any persons who you know, who as you say rushed on to the men at that time.?"

The Court: Perhaps you had better read enough so that time will be fixed. "That time" does not mean anything.

Mr. Hull: The question before that was.

"Q. Will you state from your best recollections names of any you saw in that crowd you knew where Barnes and Bailey were beaten up?

A. Well, now, I don't exactly get the idea but in the crowd, of course at the time these two were being beat up, I couldn't state anybody that was around them.

Q. Will you state the names of any persons who you know, who as you say rushed on to the men at that time?"

A. Well, there was Charley Clayborn, Clint Burris, John Manick, Jas. Slankard, Fred Wooter, Everet Wooter, Joe

Oberman. Now that's all that I know positive that I saw.

Q. No they were on the mine [properly]?

2730 A. Now, that is all I know positive now but at that time, the entire amount is on the list that was made.

Q. I show you for the purpose of refreshing your recollection a list and ask you if by looking that list over you couldn't state positively the names of any other men who you saw on the mine [properly] and within the mine inclosure on April 6th.

A. Yes, here's Jim Walker, Sandy Robinson, Dick Blair, Jesse Griffin, Fred Hogan, I saw them for good, U. S. Buzan.

Mr. Grant: Who is that U. S. Buzan?

A. Our merchant down here.

Q. Do you remember his being there?

A. Yes, sir, Gus Reeves, Leo Bock, and Jim Lee, Jim Meeks—

Q. You now have a present recollection of having seen these men on the mine there that day.

A. Yes, in fact that entire list, I stood at the window and called these names and W. H. Argo wrote them down.

Q. Well there are about a hundred and forty or a hundred and fifty names this list, aren't there?

A. I don't know what, something like that.

Q. And you have simply called off of this list to Argo, those whom you remember were there? A. Yes, sir."

Mr. Hull: Now, I will skip.

The Court: From where to where?

Mr. Hull: I stopped in the middle of page 14 and then will begin again on page 17 (reading).

"Q. I show you Mr. Thrasher, a bundle of papers bound together, each one on a printed [from] headed, Mine Invoices of the McAlester Fuel Company, McAlester, Oklahoma, and I ask you if you have ever seen these papers, those sheets before?

2731 A. Yes, sir, these are the sheets that I made of coal mine and sheet from No. 4.

Q. During what period?

A. 3/28/1—wait a minute, we better get the 1913, 4/26/-1913 to 3/6/1914.

Q. Are these sheets made in your hand writing?

A. (Leaves through them.)

Q. I believe he has gone through them before (to Mr. Grant). A. Yes, sir.

Q. Do these [invoices] sheets represent inclusively all of the shipments made from mine No. 4 during that period?

A. They do.

Mr. Hull: I desire to introduce these sheets for identification by this witness and will ask that the stenographer put her mark with an exhibit number in the corner of each sheet and that Mr. Finley, the receiver or one of the receivers of the companies plaintiff in this action place a counter check upon each sheet in order that these sheets may be identified for [ust] at Ft. Smith or for the use of the opposite counsel. I don't desire to offer these in evidence, I am having it identified, not only for use in court if it is desired but for free access for opposing counsel.

Mr. Grant: You mean that I can get it at any time.

Mr. Hull: Yes.

Q. I show you Mr. Thrasher, certain summaries—I show you some sheets which are summaries of the shipments made during that period and ask you if you have examined these summaries? A. Yes, sir.

Q. And have you by these summaries, checked these 2732 invoice sheets? A. Yes, sir.

Q. I introduce for identification and have you check with these invoice sheets all of the shipments of the Prairie Creek Mine No. 4, during the period in question.

A. I have yes, sir.

Q. Can you of your personal knowledge from any calculations which you have made from these invoice sheets, state to the court what percentage of those shipments were to consignee outsid of the tSate of Arkansas. A. 86½%.

Q. In other words that 86½% per cent of these invoice shipments you know went outside of the State of Arkansas?

A. Yes, sir.

Q. That's all Mr. Grant.

Let the invoice sheets be identified as Thrasher's Exhibit A of this date and let the summaries be identified as Thrasher's exhibit B of this date."

Mr. Hull: Then comes the cross-examination.

Mr. Neal (reading):

"Cross-Examination

By Mr. Grant:

Q. Mr. Thrasher, the invoice sheets which are referred to as letter A represent shipments made by what coal [contract]?

A. Prairie Creek Coal Mining Company.

Q. All of them are the shipments made by the Prairie Creek Coal Company, are they? A. Yes, sir.

Q. The documents thus show that these shipments were made, one on March 6, 1914, one March 11, 1914, one March 7, 1914, one March 5, 1914, one March 26, 1914, Those
2733 are the correct dates now, are they as shown by these documents?

A. Yes, sir, do you want those two, all of them.

Q. Yes, are the correct dates, you answered that—

A. Yes, sir.

Q. Those dates are shown on the statement of the first five sheets composing Exhibit A, is that correct? A. Yes, sir.

Q. Now what do the other sheets represent, the other sheets, the succeeding sheets which are larger than the first five, what do they represent.

A. They represent coal shipped to the McAlester Fuel Company on other orders.

Q. Can you tell just off-hand what year they were shipped in, all in 1914? A. No, they go back to 1913.

Q. The sheets showing shipment to the McAlester Fuel Company, showing shipments made between March 26, 1913 and what dates? A. March 1914.

Q. All shipments shown on the sheets composing Exhibit A were made by the Prairie Creek Coal Mining Company, that's true is it? A. Yes, sir.

Q. The first five sheets attached to Exhibit A are bills, statements which show shipments to purchaser in the State of Arkansas, is that true?

A. Well, this one here was no shipment at all.

Q. Describe it, just tell what it is so we can get it straight?

A. Midland Fuel 2181, all slack coal, unloaded and hauled to No. 1, Mammoth, and consumed as boiler coal.

Q. Is that a sale of coal made by the Prairie Creek Coal Mining Company to the Mammoth, vein No. 1?

A. Yes, sir.

2734 Q. What coal company was the purchaser of that load of coal?

A. The Mammoth Vein Coal Company, No. 1.

Q. By No. 1 do you mean Mine No. 1 of the Mammoth Vein Coal Company? A. Yes, sir.

Q. The coal shown on the larger sheets of Exhibit A showing shipment to the McAlester Fuel Company was delivered f. o. b. the cars at what point? A. The mine.

Q. Where, what mine? A. Prairie Creek No. 4.

Q. In Sebastian County, Arkansas? A. Yes, sir.

Q. Who paid the freight on the coal shipments shown on the larger sheets of exhibit A?
A. The coal was paid at destination by purchaser.
Q. You say coal was paid at destination by purchaser, do you mean freight paid at destination by purchaser?
A. Yes."

Mr. Neal: I now skip over to page 25 (reading).

"Q. Then you couldn't give the name or names of the persons who were kicking Barnes & Bailey? A. No, sir
Q. The meeting at the school house that you have testified about was participated in by about how many people, did you say?
A. Probably eight hundred or a thousand.
Q. Do you know the names of all persons composing the meeting? A. No, sir, I don't.
Q. Was the meeting composed entirely of men?
A. Composed of men, women, kids and everybody else, bankers, and merchants and everybody.
Q. Then it was not confined to any particular [clans] of people but generally to the people all over the country?
A. Yes, sir."

2735 Mr. Neal: That is all we will read of the cross-examination.

Mr. Hull: We want to read just a few of the omitted questions and answers, beginning on page 26 (reading.)

"Q. Were you a member of the United Mine Workers of America at the time of this disturbance or at any time?
A. No, sir.
Q. Have never been? A. No, sir.
Q. You dont know of your own knowledge whether any person in that [audidence] was a member of the United Mine Workers of America do you? A. On that day?
Q. Yes, of your own knowledge.
A. Yes, I know part of them were.
Q. Did you ever see them in a meeting of the United Mine Workers of America?
A. No, sir, because I wouldn't be allowed in one of their meetings.
Q. Then when you say that a part of the people who composes the meeting at the school house were members of the United Mine Workers of America, you are basing that upon what you have heard?
A. No, sir, basing that upon the dues that they paid.

Q. Now, can you give the names of those persons?
A. Well, all of them that worked at No. 4 paid their dues.
Q. I am asking can you give their names?
A. That I absolutely know that belonged to the Union?
Q. Yes.
A. Well, as far as that's concerned, I know that they all did, because I checked off their dues."

Mr. Hull: We will omit the redirect examination.

Mr. Neal: In view of the fact that that much of the questions along that line have not been read I will finish
2736 that reading beginning where counsel left off on page 27 (reading):

"Q. What I am asking, can you give their names?
A. This entire bunch that I have named.
Q. That bunch appearing on that exhibit C of your deposition.
A. No, sir, just part of them. Joe Overman is in that list and he didn't belong, Freda Hogan didn't and U. S. Buzan and Slankard.
Q. The other persons that you have named were members of the United Mine Workers of America, was that correct? A. Yes, sir.
Q. Now then, can you tell us the names of any one, name of any one who was in that public meeting who belonged to United Mine Workers of America, District 21, do you know that?
A. Well, that No. 4 local and the locals there was the district 21.
Q. District 21? A. Yes, sir.
Q. Now, are you testifying as to members of the United Mine Workers of America or United Mine Workers of America District 21, I presume you know they are separate organizations? A. No, sir, I don't know.
Q. If they are separate organizations then you don't know to which one they belonged?
A. To District 21, that's all I know. U. M. W. of A. District 21.
Q. Then when you gave your testimony a minute ago to the effect that the persons you have named belonged to United Mine Workers of America, you meant to say United Mine Workers of America, District 21, is that it?
A. What difference, all the same.
2737 Q. How do you know they are the same, what do you know about it, just state that?
A. Why I am not a union man, I don't know.

Q. Then you now mean to say [tha] you didn't know what you were talking [abou]?

A. No, I mean to say they were union men and paid their dues.

Q. To whom?

A. To their secretary of their local, I paid their dues.

Q. Did you collect from every person dues to the local union of United Mine Workers of America or to District 21, United Mine Workers of America or to United Mine Workers of America, now which did you collect for?

A. Both for the local and the district.

Q. Did you collect, for your information, I will state that there has been sued in this case the United Mine Workers of America, which is alleged in the complaint to be a national organization covering the entire nation of North America and has also been sued in this same complaint the United Mine Workers of America, District 21, which is an organization composed of Arkansas, Oklahoma and Texas and there is also been sued in the same complaint a large number of local unions in the State of Arkansas, and who did you collect dues for, the United Mine Workers of America, the national organization of the United Mine Workers of America District 21, the district organization or the local union of United Mine Workers of America, now which did you collect of?

A. Well, I collected 50¢, I believe it is 50¢ per month national and the other one to the district 21.

Q. All of it?

A. I suppose I don't know what they did with it.

2738 Q. Then you didn't collect any for the local?

A. The lists were made out sometimes in three different heads as a rule, it would be national 50¢ dues 1.50 and then assessment would be the way that the Secretary would turn in his list for the men to be checked off of each individual."

2739 Mr. Hull: If the Court please, we now offer in evidence the deposition of M. W. Weston, taken at Drumright, Oklahoma, at the same time (reading):

"M. W. Weston, produced as a witness for the plaintiff after being first duly sworn, testified in the following form and manner, to-wit:

Direct Examination

By Mr. Roger B. Hull:

Q. What is your full name A. M. W. Weston.

Q. Where do you live? A. Oilton.
Q. How long have you lived there?
A. Three or four months, I guess, I lived there once before though.
Q. Accepting the risk of displeasing you, I am going to ask you your nationality? A. Scotch Irish.
Q. How old are you, Mr. Weston?
A. I am fifty-six years old.
Q. In the spring of 1914, did you have a part interest in a mine at Prairie Creek? A. Yes, sir.
Q. What was that interest and what mine was it?
A. I had a third interest in the mine known as the Looper Mine.
Q. Where was it?
A. Well, sir, I can't say positive but I believe that it is east of the railroad on a creek just across the branch on the creek, I don't remember the name of the creek, but east of Prairie Creek if I am not mistaken. I think the railroad runs north and south there, I wouldn't say positive as to the direction but I am pretty positive it was east.
Q. With relation to the Bache Denman Mine No. 4, where was your mine located?
A. Well, just about one-fourth mile right straight
2740 east, I call it east.
Q. When did you go there, Mr. Weston?
A. Well, sir, I can't tell you the date, I could by looking on my books. I don't know, I lost mine, just a few days after they had that first riot down there, they had a few little riots down there. There are persons have got the dates on that better than I have.
Q. Do you remember the time when they gathered at the school house and had a demonstration, if that was April 6th, when was it you were there taking that [lots]?
A. It was, a few days after that I was there taking that list, in fact that happened every day, there for a while. They gathered there at the school house.
Q. Who owned the mine with you, who had the [lots] with you?
A. It was run in my name but Walter Williams and Sullins at Henrietta.
Q. Had a money interest did they?
A. Yes, sir, had a third interest a piece.
Q. Did you start up operation on that mine?
A. Yes, sir.
Q. When did you start it?

A. Well, sir, I can't say positive as to the date, about a month or six weeks after we got down there and was going to commence.

Q. Did you start up after the big battle of July 17?

A. Yes, sir.

Q. You say you started about a month or six weeks after you planned to start? A. Yes, sir.

Q. Why didn't you start any before?

A. Well, sir Bache-Denman was supposed to be a running non-union mine workers and the union people
2741 there came to me and informed me I better not do it, there was going to have trouble and we might be in the road down there, we had loaded down there on the same track.

Q. And they said you might be in the road?

A. Might be in the road when they had this trouble and not to do it.

Q. Did they refer to any trouble that the Bache-Denman Company had had?

A. No, sir, not at this time they didn't but simply would say that these here scabs or scalleys had come there and took that work and they was not going to stand for it and generally they would finish up by wanting to know what kind of work I was going to do, if I was working fair or was going to work like Bache & Denman and I would generally tell them that I didn't know anything about how Bache Denman were working.

Q. What did they say was going to happen over to the Bache-Denman Mines?

A. I don't know what, they generally cautioned me to be on the look out that this was going to come off and it was supposed to come off every day after about two or three weeks and they would notify me in the morning to kind of be on the look out and they would let us know in time to get our teams and men away but they didn't want to hurt us. I was going to work union men there and they always cautioned me to be sure to do that I knew what had happened to Bache Denman that was referring to the whipping Looper and them fellows down there. Well, this went on that way day by day. Well, of course, I would hear it was going to happen tonight when the miners come out of the mine and then something would happen and then it was going to
happen in the morning, just as the miners were get-
2742 ting ready down in the mine, that the [scahs] miners, Bache & Denman miners. I had some business at Ft. Smith to see about and side track business was postponed for a little while.

Q. You had heard that it would't come for a day or two?
A. So, I went to Muskogee and that morning, I guess something like about 4 o'clock from what my wife and boys told me—
Q. You can't tell what your wife and boys told you.
A. Well, I come back and this little battle was going on.
Q. What time did you get back from Muskogee?
A. I got back on that morning train, I couldn't tell you what time it was due at Midland.
Q. Do you know about what time you got back?
A. About ten o'clock, something like that I wouldn't say just to the time they got there.
Q. What did you see or hear concerning a battle at that time?
A. Well, I heard the people there in town talking about it and my team was supposed to come and meet me. I was in a hurry to get there to see how things were coming along and I went to the livery stable and hired a team and there was a young fellow, I should judge fifteen or sixteen, drove me out and we got down a little piece and met a man coming on horse back and he was carrying a gun and he slowed up and wanted to know where I was going, I told him that I was going to Prairie Creek and he said that we couldn't get down there that [there] was having war down there and we better not try it, so this young fellow and boy rode off down through the woods and we come in on the back side of the mine, Bache Denman Mine by a creek there.
Q. Do you know who that man on horseback was?
A. No, sir.
Q. Had you ever seen him before?
2743 A. Not that I know of, I may have seen him many a time before.
Q. Was he a miner? A. I couldn't say, I don't know.
Q. Then what happened?
A. We went down there and I guess there was something like twenty-five or thirty sitting there at the place where we had went and camped. We didn't want to go up in town there where this war was supposed to break out. I bought some tents and camped down there out of the way.
Q. They was right near your mine?
A. Yes, sir, right there by.
Q. When you got over to your mine what did you see?
A. I should judge twenty-five or thirty sitting around there with guns, may be more, I didn't pay any attention to them.
Q. Who were these twenty-five or thirty men?
A. I don't know.

Q. Were they miners?
A. I don't know, I rather think that they seemed to be the parties that were there on duty.
Q. Where did you go?
A. I went just across the creek and around out of the way.
Q. Take your family with you?
A. No, sir, they were all gone when I got there.
Q. Was there any shooting going on at that time?
A. Yes, sir.
Q. Where was the shooting going on?
A. Well, it was up there at the mine and around the school house.
Q. How many men did you see with guns that day?
A. I have no idea in the world, the woods was full of them and wouldn't have any idea how many.
Q. Did anything happen to your property up there that day?
2744 A. No damage at all. We had a lot of hay afire around there and was about to burn up some wagons of mine and I asked him not to burn my wagons and some of the men spoke up and said, "I know this man, he is not working scabs and they would take care of my stuff for me to go around there where my family and stuff was and stay out of the way.
Q. And you went at that time?
A. I went across the creek and I found all of them sitting there behind the hill [there] there was no danger of any bullets hitting them. There was quite a little hill between my place and the No. 4 mine and I got behind that hill.
Q. Did you do something later in that day in regard to moving some coal cars?
A. No, sir, I didn't myself but—my boys did.
Q. Did you see them?
A. I didn't see them move the cars.
Q. Who handled the teams?
A. I think my oldest boy drove the teams. There was four or five cars went up pulled out, they paid me $5.00 for pulling out of there, that's all I did know about it.
Q. The next day, did you see a powder house burn up?
A. Yes, sir.
Q. [Well] you state in your own words, the details of that?
A. There was lots of people there looking at the ruins.
Q. Looking at what ruins? A. At this mine.
Q. No. 4? A. Yes.
Q. Had No. 4 been burned up the day before?

A. Yes, sir, a little shanty, they kept some stuff in .
Q. Did you see it burn? A. Yes.
Q. What time did it burn?
2745 A. About twelve o'clock or a little after, I didn't go down there I had my business some place else.
Q. Where was this powder house that burned?
A. It was on the west side of the track across from the mine that was No. 4 mine.
Q. What did you see in relation to the blowing of that powder house?
A. Well, there was quite a bunch up there looking around and this stuff was in a little frame building and there had been some boards pried off on [tha] house and on the east side I remember there was quite a bunch of shovels and picks in there and some supplies and things and a lot of fuses and right smart powder and there was some [celser] there and some powder that had kind of been pulled outside and there was quite a bunch of boys ranging from twelve to fourteen years old and a fellow named Fred Bryant and some stranger were up there and I told these boys who had been standing there, if that would go off it would kill every one of us and these boys went away from there and we went then on around to where the blacksmith shop had been and were standing in there looking at the blacksmith shop and the machinery that had been burned up and stuff and I can't say positive whether it was me or one of the other fellows said, "That fellow set that afire and he set this here [selser,] paper and stuff afire." And the wind was blowing it right towards the powder house. Well, we all went outside that was no place for us, we all started to run and I didn't look back for a quarter of a mile, it didn't look like a good place to be.
Q. Did you see this fellow there yourself, [sitting] fire to it, or just leaving it?
A. I didn't see him scratching no match, he started
2746 to run and so did we.
Q. Did you hear the explosion?
A. Yes, sir, it didn't amount to anything, it wasn't loud, it didn't make any noise to speak of at all.
Q. Several days after the battle did you see one or two or more men at Prairie Creek with some guns?
A. Yes, sir, several times I have seen that, I don't know who they were.
Q. Did you see one or two more men, two or three days after the battle sitting on a porch or on some boxes or something—handling some guns? A. Yes.
Q. What was said at that time by one of them?

A. Well, sir, Mister, it would be hard to remember all that was said but one fellow had one of these high powered guns and they don't speak very good language and he called the gun he, and he said "He fight twice and can fight again". I was in position it didn't stand me in hand to take sides with either and I paid as little attention to the talk as I could because I didn't want to get mixed up in it.

Q. Do you know who those were?

A. They were foreigners, I know that.

Q. Were they [minors]?

A. I don't know, everybody there were miners, I couldn't say whether they were or not.

Q. Mr. Weston, do you remember John Shaleen went down to the mines in October with a bunch of men for the company?

A. Well, I couldn't say whether it was October but I remember him coming down there after the second battle.

Q. Who did he have with him?

2747 A. I can't say, some officers, United States Officers. I understood he was United States Marshal.

Q. Did you see this officer with him?

A. Yes, sir.

Q. Do you remember the night of October 28th when some buildings at No. 4 were burned?

A. I remember the night they burned the building but I don't remember whether it was the 28th of October or I don't remember the date.

Q. Were you in Hartford, the morning of that day?"

Mr. Neal: If the Court please, at this time we desire to object to any occurrences or happenings that took place on October 28th, or after the filing of this suit, for the reason we think it is improper and not relevant for the reasons heretofore stated by co-counsel.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

"A. Yes, sir, I think I was there twice that day, I went there frequently there as high as two or three times a day.

Q. What did you hear in Hartford on the streets about something that was going to happen that night?

A. Well, I don't know that I heard anything that morning.

Q. Did you hear anything that afternoon?

A. I don't know whether it was morning or afternoon but I think it was evening though, I was in there and wanted to

know if these scalleys or scabs whichever they happen to call them were still there and I told them they was and they told me I had better go down there and get my men out of there and keep them out of there that these fellows were go-
2748 ing to clean up there again and I drove down to the mine and told the boys to hurry up and get away from there as soon as they could.

Q. That was at your mine? A. Yes, sir.

Q. Did you go over to No. 4 and tell John Shaleen about this?

A. Yes, sir. You don't understand exactly about this, we had the same track to load on and we didn't want to be up there unloading because it was level from there down to our mine and these bullets would reach down there and nearly every man in Prairie Creek had one and I told the boys we wouldn't work tomorrow for [it] they had war there they better stay away for a little while because after the other battle they had you could hear bullets in most every direction and guns afiring and I didn't feel very safe out around there myself. Well, I wasn't a bit afraid of them hurting me if they knew who it was or any of my family.

Q. Who was it told you about this in Hartford that day?

A. I don't know it was a stranger there. These men would come asking me about work and telling me to run it fair and asking if I run it fair.

Q. Was it the same men that asked you for a job and told you about running it fair that told you over in Hartford that day?

A. I couldn't say about that, they were coming to me all the time about work, I don't know. I suppose there was a half a dozen men in Hartford and I know, I knew the banks and grocery store.

Q. Were these men in mining clothes?

A. No, sir, they were not. You seldom see a miner on the street but what's he is dressed up unless going to work or from work.

Q. Did you ever talk to any of the union men who
2749 you knew by name?

A. Yes, sir.

Q. About this trouble? A. Well, yes.

Q. State what any of them said to you, I want you to tell in your own words.

A. Well, that would be too hard to tell, I couldn't tell that. It was every day while I was there, they would hold these little conversations out under trees and so on and they generally would stop me as I was going to town and when they found out I was going to run union men that was about

the extent of their business but they promised to let us know when it come off so as to get us out of the way.

Q. How long did you work your mine?

A. Mister, I can't remember, the books would show, I got them at home but I can't tell you exactly the time.

Q. About how many weeks did you work there before you quit? A. We quit in October, I believe.

Q. Then while you were there, did your operation of the mine cover three months time?

A. I don't know, just close to it.

Q. You were operating union? A. Yes.

Q. Did you during that time have a great deal of trouble with the union?

A. About once a week as a rule they would go on a strike with me, I never had any trouble only that.

Q. What would they do in relation to these strikes?

A. Meet up there at the school house what they called the meeting place and decide on something that wasn't in the constitution or agreement and tell me to either com-
2750 ply with that or they would go on a strike.

Q. Come down and make some demand of you?

A. Yes.

Q. And demand something that was not covered by the agreement? A. Yes, sir.

Q. You had a contract with the union?

A. Yes, sir. Then we would have to send for Billy McLaughlin—

Q. Who was Billy McLaughlin?

A. He was one of the board and was as fair and honest a man as I have had dealings with. We would tell our trouble to Billey and he would put them back to work. I think it was either eleven or fifteen strikes that we had and I won every one of them without an effort.

Q. How long would the men stay out on the strike?

A. It depended [somethin] on where Bill McLaughlin was.

Q. How long would they average?

A. I never kept any track. Sometime two or three days and sometimes a week or more. We never did a lick and the last time Billy was over there, he wanted to know what they meant that I treated them fairer than any man who he had ever seen. That I had offered to do anything. He told these men that President Cunningham, Cunningham I heard that mentioned that was up in Ft. Smith, that he heard me say one time that I would do anything that the agreement called for but I would stand for them going out and making agreements out behind stumps and schoolhouses. Cunningham and

me both said that that place there caused more trouble than all the district put together and Dewar was next.

Q. McLaughlin put them back to work that time?

A. Yes, sir, every time.

Q. You didn't make much money on that operation?

2751 A. Well, I judge, I lost something like about three thousand dollars during the running of the whole thing.

Q. Was that mine in your estimation valuable enough so you could have made money if you had been allowed to run it?

A. We made money when we run but we only run once in a while, I got 50cts. in a ton for loading this coal in addition to 1/3 of the profits.

Q. I will ask you just one more general question, Mr. Weston, do you know anything more about these troubles down there during that period which you will tell the court?

A. No, sir, I don't for I have been trying to forget everything since it commenced, I have been trying to keep out of this. I could have knowed a heap more about it if I had wanted to but I didn't want to know about it.

Q. That is all, Mr. Grant."

Mr. Neal: We waive the reading of the cross-Examination.

Mr. Hull: Mr. Weston was recalled and that testimony is found on page 75, (reading):

"Mr. M. W. Weston

Recalled.

Direct Examination

By Mr. Hull:

Q. Since you have testified, Mr. Weston, I have heard one thing, I want to ask you about, can you name any one who told you they would give you warning in time to get away before the trouble came?

A. Yes, only one man that I am acquainted with, I knew a great [man] men there by sight.

Q. Who was the one that you told you that you know.

2752 A. Frank Scoffield, he was kind of chairman of the board. He was the one told me that we would be notified that we might get away. I asked him why he didn't let us know it in time after the battle next day and he said he had no chance to get down there. There was three or four of those men got drunk and went down there and started to shooting with the scabs and he had no show to go down and he supposed we would hear it anyway.

Q. Was that all he said?
A. Yes, sir, we had been there about three or four weeks, waiting for this war to be settled for it was supposed to come off every day and night for about three weeks, I think.
Q. It was the day of the battle you jumped on him?
A. No, sir.
Q. When was it?
A. It was the first time I saw him after the battle, I called his attention to how truthful he was with my family and all my stock down there right in range of the guns.
Q. And when it was he told you why the battle came off before it was planned?
A. Yes, sir, those fellows were drunk down there and shooting into the scabs that started the fight.
Q. That's all."

2753 ST. CLOUD COOPER, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. What is your name? A. St. Cloud Cooper.
Q. You are a practicing physician in Fort Smith?
A. Yes, sir, I am.
Q. How long have you practiced here? A. 20 yars.
Q. Did you attend certain employes of the Bache-Denman Company at the Sparks Memorial Hospital on April 6th and a few days succeeding April 6th, 1914?
A. I did.
Q. State, if you remember who those men were.
A. One was a man by the name of Barnes, and Looper was another. I think there was a man named Sylsberry and a man by the name of Bohannon and several others I cannot recall.
Q. Was one Riley? A. Yes, sir.
Q. State the extent of the injuries of those four men, if you remember them?
A. Well, Mr. Looper had several front teeth missing, and he had—oh, a number of cuts on his head and bruises on his body. And then Barnes he had several scalp wounds and contusions on his body,—on his ribs and back and chest and all that.
Q. Do you remember what was the condition of Bailey?
A. I think he had a couple of ribs broken, or something like that as well as I can remember now.
Q. Do you remember what Sylesberry's injuries were?

A. Yes, Sylesberry had bruises over him and cuts—contusions.

Q. Did you treat all those four men surgically?

2754 A. Yes.

Q. Do you remember how long they were under your care?

A. No, sir, I do not [now.] Looper stayed there—let's see, Barnes was there seven or eight or ten days and Looper stayed longer and so did Bailey and Bohannon.

Mr. Hull: That is all.

Mr. Covington: No questions.

(Witness excused.)

2755 Mr. Hull: If the court please, we offer in evidence the deposition of John Weston, taken at Drumright, Oklahoma, at the same time as the taking of the other depositions, found on page 56, (reading):

"JOHN WESTON, produced as a witness for the plaintiff after being first duly sworn testifies in the following form and manner, to-wit:

Direct Examination

By Roger B. Hull:

Q. What is your name? A. John Weston.

Q. You are the son of the man that just testified?

A. Yes, sir.

Q. Where do you live? A. Oilton, Oklahoma.

Q. What is your buiness? A. Oilfield.

Q. What does your father do now?

A. Oil field, I a driller.

Q. Did you live at Prairie Creek in the spring and summer of 1914? A. Yes, sir.

Q. Was your father running a mine there? A. Yes, sir.

Q. Where was that mine?

A. About one-quarter mile south of the Prairie Creek Coal.

Q. Do you remember the day of the big battle there, duly July 17th? A. Yes, sir.

Q. When did you first hear that battle begin?

A. Well, about 7:30 in the morning, I never waked up for the first one.

Q. What did you hear?

A. Well, I started to town after something and I heard shooting.

Q. You started with your team? A. Yes, sir.

Q. Who was with you? A. Fred Bryant.
2756 Q. How far did you get with your team?
A. Well pretty near a mile from home.
Q. Go toward Hartford? A. Yes, sir.
Q. That would put you between the school house and Hartford?
A. Right between the school house and the mine, between No. 4.
Q. What happened there?
A. I had just turned the corner.
Q. At the school house?
A. Yes, sir, when the shooting took place.
Q. Where did the shooting begin? A. I couldn't say.
Q. Where was the shooting?
A. Well, it was from the mine and the hill.
Q. Shooting both ways? A. Yes, sir.
Q. From the hill into the mine and the mine out into the hill? A. Yes, sir.
Q. The shooting on the side towards the school house where were the men that did the shooting?
A. They were up in the edge of the timber.
Q. Would that be behind the school house or before the school house?
A. Just before the school house.
Q. Did the shots go over your head?
A. Yes, sir, I were in the buggy and they went over the buggy.
Q. When these shots went over the buggy, were they from the hill or from the mine? A. From the hill.
Q. How many shots would you say there were?
A. Mister, I don't know.
Q. Well, what would you say?
A. I suppose three hundred.
Q. Three hundred, how many men with guns did you see?
A. Go to town?
2757 Q. No, right there.
A. I suppose twenty-five any how.
Q. Did you know any of these men? A. I did not.
Q. Had you ever seen them before?
A. Not as I know of.
Q. Do you know whether they were miners?
A. I wouldn't say to that.
Q. What did you do then?
A. Well, I stopped first.
Q. Then what did you do?
A. They told me to get out of there and I went down the road.

Q. Did you go to Hartford?
A. Well, I had started to Hartford.
Q. Did you go?
A. I had stopped down there, I met a man I know.
Q. Who was he? A. Frank Scoffield.
Q. Have any conversation with him?
A. Yes, sir, I had asked him if it would be safe to go to town and he said yes, if they stopped me to tell them who I was and would leave me be.
Q. Did Frank have a gun? A. No, sir.
Q. Any one with him? A. No, sir, by himself.
Q. Which way was he going? A. Home.
Q. Where was his home.
A. Just across the road from John Bimpsons.
Q. That's at Prairie Creek? A. Yes, sir.
Q. He was in Prairie Creek when you talked with him?
A. Yes, sir.
Q. You see any men with guns in Prairie Creek?
A. No, sir, I didn't.
Q. Did you see any men with guns on the way into Hartford? A. Yes, sir.
Q. About how many?
A. About three or four hundred.
Q. Which way were they going?
A. Towards Prairie Creek.
2758 Q. Did you know whether they were high powered gun or shot guns?
A. Anywhere from twenty-two to forty-five.
Q. Did you stay in Hartford all that day?
A. Yes sir, no, about five o'clock in the evening.
Q. What time did you go back to No. 4.
A. Along about sundown.
Q. Did you meet any men on your way back to No. 4?
A. Not very many.
Q. Did you find anybody over at No. 4?
A. Not very many.
Q. Did you have something to do with hauling some cars, coal cars off the scales? A. Not off the scales.
Q. By the scales? A. Yes, sir.
Q. Tell what you did.
A. Well, the railroad crew was there pulling across to the west and they couldn't back and the scales were burning . . . .
Q. Scales were burning? A. Yes, sir.
Q. Was there a loaded car in the scales?
A. Yes, sir.
Q. Was that burning? A. Yes, sir.

Q. You didn't, by chance happen to notice the number on any of these cars, did you? A. No, sir.
Q. What did you do about hauling some other cars out?
A. This is all I pulled.
Q. What cars did you pull? A. Loaded cars.
Q. Where were they?
A. Back of the scales towards the tipple. East of the scales.
Q. How did you get around the burning scales?
A. Didn't take them by, pulled off into the track.
Q. Pulled them east from the scales? A. Yes, sir.
2759 Q. Do you know how many cars there were west of the scales that the switching crew had taken?
A. No, sir.
Q. Who was there when you got back?
A. Local crew was all I know.
Q. Who was they? A. Frank Pigg was conductor.
Q. That's all you know? A. Yes, sir.
Q. Did you see any other fires there excepting the car burning on the scales?
A. No, sir, everything was burned when I got back.
Q. Did you see any men that were either killed or wounded? A. No, sir.
Q. Do you know whether Frank Scoffield was hurt in the leg? A. Not for sure.
Q. What did you mean by that?
A. I heard him say he was.
Q. When did he tell you that?
A. A few days after the fight.
Q. Did he say anybody else got hurt?
A. Not that I know of.
Q. You didn't hear him say any one else got hurt?
A. No, sir.
Q. You were around with your father a good deal before the battle came off? A. Yes, sir.
Q. Worked right with him? A. Yes, sir.
Q. Do you remember union men coming to him and warning him about things that were going to happen?
A. Yes, sir, heard him speak about it.
Q. Heard them speak to him about it?
A. No, sir, I don't remember.
Q. Didn't you hear them talk to him about the trouble mine there? A. Oh, yes, yes.
2760 Q. And speaking to him about his running fair?
A. Yes, sir.

Q. And telling . . . . did you hear them tell him that they would give him notice before anything happened so he could get away? A. Yes, sir."

Mr. Neal (reading): "Cross Examination

By Mr. Grant:
Q. Do you know who it was that was telling him that?
A. No, sir, I can't call the names but I saw the fellows.
A. That's all."

The Court: At this time we will adjourn for the noon recess until two o'clock.

2761 Tuesday, Nov. 6, 1917, 2:00 o'clock, p. m.

Court reconvened pursuant to adjournment, the parties appearing before, and the following proceedings were had:

Mr. Hull: If the court please, we desire to have identified and explained this relief map, and I am wondering if it could not be seen more easily by the jury if placed over there. I am sorry I didn't have it put there.

H. O. Lewis, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:
Q. What is your name? A. H. O. Lewis.
Q. What is your business? A. Mining engineer.
Q. Have you been employed as a mining engineer and doing also some civil engineering for the Bache-Denman Coal Company? A. Yes, sir.
Q. During how many years? A. Since 1906.
Q. How long have you practiced that profession?
A. Since 1898.
Q. Did you, at the request of the plaintiffs in this case, prepare, or have prepared under your direction and according to your own surveys, a relief map of the Prairie Creek Mine No. 4 and its vicinity? A. Yes, sir.
Q. Is this the relief map referred to? A. Yes, sir.

Mr. Hull: We might have this marked by the reporter plaintiffs' Exhibit 61.

(The [maper] referred to was marked by the reporter
2762 "Plaintiffs Exhibit 62, J. K. P."

Referring to plaintiffs' Exhibit 61, J. K. P., the relief map, vicinity of Prairie Creek, Sebastian County, Arkansas,

scale vertical, one inch, thirty feet; horizontal one inch, one hundred feet; this map was prepared by you or under your direction?

A. Part of it personally, and one of my assistance, we worked about equal time.

Q. And you have checked this map with surveys?

A. We made a special survey for it, and used other surveys.

Q. Will you come over to the map and describe, standing there at the left for a moment,—will you describe where No. 4 Prairie Creek mine is?

A. This is No. 4 (indicating).

Q. Now, you will please talk up.

A. This is No. 4 Prairie Creek (indicating).

Q. Will you point out the topple at No. 4?

A. This represents the tipple (indicating).

Q. Will you describe what those two little buildings just directly underneath the dirt dump are? A. Here?

Q. Yes? A. It is the bunk houses.

Q. Will you show where the school house is?

A. (Witness indicates.)

Q. Will you state approximately how far that school house is from Mine No. 4?

A. If I had a rule, I could tell you exactly.

Q. Here is one? A. About 1600 feet.

Q. Will you point out on that map the road to Huntington? A. This road over here (indicating).

Q. From your knowledge of that country and the surrounding country, in what direction from that map would Huntington be?

A. Out in this direction (indicating).

2763 Q. Off up over the upper left hand corner of the map?

A. Yes, sir.

Q. Do you know about how far Huntington was from Mine No. 4?

A. I can't tell you offhand, but I think about two miles, or possibly more.

Q. Will you indicate in which direction from Mine No. 4 the town of Midland is?

A. Midland is down in this direction (indicating).

Q. And how far from the school house?

A. Three and a half to four miles, offhand.

Q. Will you show where the fan house was?

A. Of No. 4, the No. 4 fan house?

Q. Yes, No. 4 fan house? A. Here (indicating).

Q. Is that what is sometimes called Goo Goo, or Goo Goo Eyes? A. Yes, sir.

Q. Where was No. 3 camp? A. Here (indicating).
Q. And those are the houses in No. 3 camp?
A. Yes, sir.
Q. Where is what was known as the deck house?
A. I don't know.
Q. You don't know where the deck house was?
A. No, sir.
Q. Now, point to Mine 3? A. (Witness indicates.)
Q. About how far was Mine 3 from Mine 4?
A. 2700 feet, very close.
Q. That is roughly about a half a mile?
A. A little over.
Q. Do you know where No. 3 slope connected with No. 4, under ground?
A. I don't know, but I can give it to you approximately, I would say pretty close there (indicating).
Q. No. 3 slope,—
2764 A. Come down about there, and connected,—
Q. (interrupting). With an entry at No. 4 mine?
A. Yes, sir.
Q. Going back for a moment to No. 4, will you point out where that so called wire rope was, that wire cable that was stretched there on April 6th?
A. One cable across this point, and one across this one (indicating).
Q. And those cables connected with two fences, did they not? A. Yes, sir.
Q. Point out the fences, just trace them with your pencil.
A. (Witness indicates.)
Q. So that the wire ropes and fences just enclosed Mine 4? A. Yes, sir.
Q. Will you point out the town of Prairie Creek?
A. Here (indicating).
Q. About how far from No. 4 was the town of Prairie Creek? A. Two thousand feet.
Q. Do you know where John Bumpas' is or was?
A. No, sir I don't.
Q. Now, will you follow, beginning at the school house, the road that went to Hartford?
A. The road here and up here and coming around (indicating).
Q. Now, that road went through Frogtown? A. Yes, sir.
Q. Will you point out Frogtown? A. Here (indicating).
Q. Now, between Mine 4 and Frogtown, was there some elevation? A. Yes, sir.
Q. Will you indicate it on the map?
A. Here (indicating).

Q. About how high was that hill or ridge?
A. From No. 4?
2765 Q. From a level with No. 4 and the level of Frogtown, what was the elevation there between the two?
A. I can just approximate that.
Q. Will you do that? A. Near 200 feet.
Q. Will you point out Mammoth Vein Mine No. 1?
A. Here (indicating).
Q. Now, were there two tipples at No. 1 A. Yes, sir.
Q. What were they called?
A. Called Rock Island tipple and Midland Valley tipple.
Q. Will you point out the Rock Island tipple?
A. Yes, sir (indicating).
Q. And the Midland Valley tipple?
A. Here (indicating).
Q. What is this mine right over here in the right hand corner?
A. The Hoffman mine, later operated by the Central Coal & Coke Company.
Q. How far is Hartford, if you know, from Mine No. 4?
A. I would say about three miles; I may be a little off on that.
Q. How far is it from Mine 4 to Frogtown?
A. 6700 feet, which would be a mile and a quarter.
Q. Will you point out the Prairie Creek station on the Midland Valley Railroad? That was right in the village of Prairie Creek? A. Yes, sir.
Q. Where is what was known as the switch or crossing, the mine crossing? A. I don't know.
Q. You don't know it by that name. Where did the main switch go off of the Midland Valley Railroad?
A. Down here four or five hundred feet from this point (indicating).
Q. Will you point out the office at Mine No. 4? Was that just inside of the enclosure? A. Yes, sir.

2766 Mr. Hull: You may cross-examine.

Mr. Covington: No questions.

Witness excused.

Mr. Hull: I want to offer this relief map, Exhibit 61, in evidence.

2767 G. W. Scowl, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. G. W. Scowl.

Q. What is your present position?

A. General manager of the Coal District Power Company.

Q. Where is that located? A. Huntington.

Q. How long have you held that position?

A. Of the Coal District Power Company, since February 1st of this year.

Q. What was your position in 1914, in the spring and summer of 1914?

A. General manager for the Coal & Gas Belt Electric Company of Huntington.

Q. Was that the company which was supplying the Bache-Denman Mine with power and light? A. Yes, sir.

Q. Referring to plaintiffs' Exhibit 61, will you point out on that map, point out just where the power and light was supplied by your company to Mine No. 4?

A. Now, the main line run past this school house. We had a main line running to No. 4, and our main line from Huntington came from Midland to Hartford, and branched off at this school house to Mine No. 4.

Q. Now, just describe a little more minutely where that branch was made from the main line?

A. About a hundred feet east of this school house there is a junction point, and at that junction point it was taken off, and a high tension line run to Mine 4.

Q. What you call a high tension line?

A. Yes, sir, about 7,000 volts.

Q. How far is that from that point to the mine?

2768 A. (Could not understand the answer.)

Q. During the period of the so called labor trouble at Mine No. 4, were you called over to Mine No. 4 to repair breaks in the line at that point several times? A. Yes, sir.

Q. Will you state how many?

A. I couldn't state exactly, but offhand I would say a half dozen times.

Q. State what you found when you went over there?

A. On one occasion I found a chain was drawn over the line, short circuiting one phase of a three phase line. Another occasion, I found the wires cut.

Q. Did you make those repairs yourself?

A. I made the chain repairs personally, and two of the cuts personally.

Q. Did men under your direction make the others?

A. Yes, sir.

Q. Will you state whether or not any attempt was made in Huntington to boycott your company because you were supplying Mine No. 4 with power and light?

Mr. Warrum: The defendants separately object as relating to a collateral matter.

The Court: Does it go to the action of the defendants, or some of them?

Mr. Hull: It will appear that a meeting was held in Huntington, and I think this man knows a great many that were there.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Will you state,—what was your answer to that question? A. Will you state the question again, please?

2769 Mr. Hull: Will the stenographer read the question?

(Question read by official stenographer as follows: "Q. State what attempt was made in Huntington to boycott your company because you were furnishing Mine 4 with power?")

A. I hardly know how to answer that question, except to say in a general way it was an attempt, as far as conversation was concerned; there was a good deal of talk about it.
Q. Was there some meeting held in Huntington at which this matter was discussed? A. Yes, sir.
Q. Were you present? A. I was.
Q. Who were present at that meeting?
A. Well, there was lots of people present.
Q. About how many?
A. Oh, I would say perhaps a hundred.
Q. Where was that meeting held? A. In the city hall.
Q. Was that hall used for the union meetings?
A. Yes, sir.
Q. Who was present at that meeting?
A. Why, as I remember, Dan Hogan was one.
Q. Is the Editor of the Huntington Hummer?
A. Yes, sir; and another party that I remember was Will Dockerman.
Q. Who was he?
A. A member of the Mine Workers at Huntington; and a man by the name of Wilkerson.
Q. Do you know who he was?

A. He was a member of the Mine Workers Union.
Q. Will you state what was said and done at that meeting?
A. Why, about the whole sense of the meeting was a protest against our serving electric power to these mines that were going on an open shop basis. It seemed to be kind of a protest, as near as I could sum the situation up.
2770 Q. What companies were allied there together, besides the Power Company? Is there any other company that was allied with them, under the same management?
A. No, sir, the power company and ice company were one.
Q. The power company and ice company were one?
A. Yes, sir.
Q. And was this protest against,—
A. (interrupting). Both against the ice company and the electric company.
Q. What did they say they would do if you kept serving the mines with power?
A. There was no direct threat made, only indirect talk about a boycott.
Q. Boycott on the two companies?
A. Yes, sir, on the two companies.
Q. What did you state in that meeting?
A. Well, it seemed like the object of the meeting was to get us to quit serving power to this company, or be boycotted, and I maintained that it was just as well to be bankrupt from a boycott as a damage suit for abrogating our contract.
Q. You had a contract with those mines?
A. Yes, sir; for ten years; eight years still to continue from that time. The contract had been in force two years.

Mr. Hull: You may cross-examine.

Cross-Examination

By Mr. Covington:
Q. How long did your contract have to run at the time of the Prairie Creek trouble? A. How long did it have to run?
Q. Yes. A. About 8 years.
Q. You had just made it?
A. No, it had been made two years prior to that.
2771 Q. Now, is that all that occurred over there at Huntington, what you have related here?
A. All that occurred?
Q. With reference to power?
A. With reference to power?
Q. Yes.
A. No, there were other things that had occurred, several other things.

Q. What occurred at the meeting outside of what you have told, the meeting that you referred to in your examination-in-chief? A. I don't understand your question.

Q. You stated all that occurred at the meting that you have testified about?

A. I told you what he asked me about what had occurred at the meeting as near as I remember it.

Q. Did you continue to supply the power? A. Yes, sir.

Mr. Covington: That is all.

Witness excused.

2772 Mr. Hull: If the Court please, we will finish reading the depositions that we began this morning. We offer the deposition of Mack Weston, taken at the same time as the two depositions read this morning. (Reading.)

"MACK WESTON, produced as a witness for the plaintiff after being first duly sworn, testifies in the following form and manner, to-wit:

Direct Examination

By Roger B. Hull:

Q. What's your full name? A. Mack Weston.

Q. Where do you live? A. Oilton.

Q. You are the son of the man that testified this morning, and the brother of the one that just left the stand?

A. Yes, sir.

Q. Where were you on July, 1914?

A. Down at Prairie Creek.

Q. Do you remember the date of the big battle there?

A. Yes, sir.

Q. Were you working the mine with your father and brother?

A. Yes, sir.

G. Did you work around with your father and brother most of the time? A. Yes, sir.

Q. Do you remember the union men coming to him and discussing the conditions with him?

A. Yes, sir.

Q. You were with him when they would come and ask him if he was going to run fair? A. Yes, sir, I was.

Q. Did you ever hear them tell him that they would give him warning in time for him to get out?

A. Yes, sir, I did.

Q. Did you ever hear them give him any warnings?

A. I never did.
2773 Q. But you did get out? A. Yes, sir.
Q. You left the day of the battle with your mother, didn't you?
A. Yes, sir.
Q. What time in the day did you leave?
A About seven thirty.
Q. What time did the battle begin?
A. The second battle begun about 7:30 or 8:00 o'clock.
Q. Was there a first battle?
A. They woke us up about 4 o'clock.
Q. With shooting? A. Yes, sir.
Q. Where did this shooting come from?
A. I don't know.
Q. About how many shots did you hear?
A. A dozen or so.
Q. That was the first battle? A. Yes, sir.
Q. Did you see any men with guns that day?
A. Yes, sir.
Q. Did they come around to your camp? A. Yes, sir.
Q. Who were these men that come around there?
A. I don't know.
Q. Were they union men? A. I suppose they were.
Q. You had seen them around before? A. Yes, sir.
Q. Were they miners? A. I suppose so.
Q. Were they some of the same ones that had been talking to your father? A. Yes, sir, they was.
Q. What did they tell you? A. That morning?
Q. Yes, when they came to your camp?
A. Told us that we better get away from there, going to have trouble up there this morning.
Q. Did they have guns? A. Yes, sir.
Q. About how many were there?
2774 A. Some were about two hundred and fifty.
Q. Two hundred and fifty men with guns?
A. Yes, sir.
Q. Where did you go with your mother?
A. Went back up the street towards Duns back up where my uncle was camped.
Q. Who was your uncle? A. Newt Brown.
Q. Were there any other families up there? A. My aunt.
Q. She lived there? A. Yes.
Q. Hear any other shooting after you got up there?
A. Yes.
Q. How long did the shooting continue?
A. About noon, from about 7:30 until noon.
Q. When did you go back to your own camp?

A. About two o'clock.
Q. Did you see anything of the fire at No. 4? A. Yes, sir.
Q. What was burning when you saw it?
A. The tipple was burning.
Q. What time was that? A. About one, one or two.
Q. Was there any of the so called scabs there then?
A. No, sir, they were not.
Q. Were there any of the union men there then?
A. I suppose so.
Q. What did you mean by suppose so?
A. I don't know whether he belonged to it, to the union, I suppose so, I heard him say so.
Q. What were they doing?
A. Burning up stuff as fast as they could, we was around the mine there.
Q. Did you help drag some coal cars out. A. Yes.
Q. How many cars did you drag away from the burning scales?
A. Four cars, I suppose it was.
2775 Q. Was there a car of loaded coal on the scales burning?
A. Yes, sir.
Q. And the four cars you dragged away were all loaded?
A. They were all loaded.
Q. Did you see No. 4 powder house burn up the next day?
A. Yes, sir.
Q. What did you see in regard to that?
A. I just seen it as it went up.
Q. You didn't see a man set fire to it?
A. No, sir, I didn't.
Q. Did you ever see any men that were hurt in that battle?
A. No, I never did.
Q. Do you know Frank Scoffield? A. Yes, sir.
Q. Do you know whether he was hurt or not?
A. No, sir, he was not hurt that I know of.
Q. You know John Mannick? A. Yes, sir.
Q. Did you see him around there that day?
A. I believe I did.
Q. Where did you see him? A. Up at No. 4.
Q. What was he doing?
A. Doing about like the rest of them was.
Q. What was that?
A. Putting that stuff in the fire as fast as he could.
Q. What stuff?
A. Their tents and suitcases, they burned those all up.
Q. Did you see them set fire to No. 4 tipple?
A. No, sir, I didn't.

Q. Did you see them set fire to any of the buildings?
A. I saw them when the house burned up one night.
Q. I mean did you see anybody setting fire to any buildings?
A. Yes, sir, I did.
Q. Who were they? A. I don't know their names.
Q. You saw John McNiche there?
2776 A. No, sir, I don't know as I did.
Q. When was this you saw them setting fire to some of the buildings? A. One night.
Q. After the battle? A. Yes, sir.
Q. How many men did you see around there that night?
A. There was five.
Q. Had you ever seen any of them before? A. Yes, sir.
Q. Where had you seen them. A. Around Prairie Creek.
Q. What had you seen them doing before?
A. Never did work any.
Q. Well, were they miners by trade? A. Yes, sir.
Q. Where, at Prairie Creek? A. Yes.
Q. They were scabs? A. No, sir.
Q. Describe what they were doing, what you saw them doing.
A. I saw them burning the house up there back of the hill, there by No. 4.
Q. Was the boarding house burned?
A. Yes, sir, it was, wasn't a house left there.
Q. How many buildings did they burn that night?
A. I don't remember how many buildings there was up there at No. 4 but they burned every one of them.
Q. What time was that? A. I don't remember.
Q. How were they setting fire to them, have excelsior, or what?
A. Had excelsior and bedding, setting it on fire.
Q. Mr. Weston, do you know anything about this trouble down there that you will state to the court?
A. Yes, I do.
Q. Well, state it.
A. Jim Meeks had a couple of men's teeth showing them around, bragging about what he had done to some of them men.
Q. What did he say?
2777 A. Said he had two or three of these scabs marked, said he had their teeth marked, said he would get two or three of their teeth so that they would know that they had been some place.
Q. When was this?
A. The year 1914 but I can't tell you the month.

Q. After the battle?
A. No, sir, before the battle, they come and ask you if you know where there was any scabs or scalleys.
Q. Union men would do that?
A. Yes, sir, I suppose they were union.
Q. Anything else you know? A. No, sir.
Q. Know about anybody being killed? A. No, sir.
Q. You know Clint Burris? A. Yes, sir.
Q. Did you ever see him around there the day of the battle?
A. Yes, sir.
Q. What was he doing?
A. Doing the same stuff the rest of them was. Helped burn the stuff up, getting rid of it.
Q. Can you name others that you saw doing the same thing?
A. No, sir, I don't believe I can.
Q. Do you know Sandy Robinson? A. No, sir.
Q. That's all, Mr. Grant.

2778 Mr. Neal (reading):

Cross-Examination

By Mr. Grant:
Q. Do you know the names of any of the people that told your father they would give him notice when to get out before there was any trouble?
A. Yes, sir.
Q. Who were they? A. Frank Scoffield.
Q. Who else? A. That's all I know of.
Q. Where were you when the tipple caught fire?
A. I was down at my uncle's.
Q. You didn't see it set on fire?
A. No, I didn't see it set on fire. I seen it directly after it was on fire though.
Q. How far did your uncle live from the mine where this tipple was burned? A. About one-half mile.
Q. Which direction from the mine?
A. Search me, you can't tell down in Arkansas.
Q. Was it on the other side of the hill from the mine?
A. Yes, sir, around the corner of the hill.
Q. Was it in the timber? A. Yes, sir.
Q. The hill was between your uncle's house and the mine, wasn't it? A. No. 4, yes.
Q. That's where the tipple was burned, wasn't it?
A. Yes, sir.
Q. You say the house that you saw burned wasn't burned on the [dat] of the battle at Prairie Creek?

A. No, the houses weren't burned on the day of the battle.
Q. When were they burned?
A. I don't remember the night but it was one night though.
2779 Q. Before the battle or after the battle?
A. After the battle.
Q. When did you move away from that section of the country?
A. Search me.
Q. What year did you move away in? A. 1914, I believe.
Q. You were not there but a short while? A. What?
Q. How long did you live there? A. About three months.
Q. Do you remember when you moved there?
A. I don't remember the month, we moved there.
Q. Did you live there in the summer or in the fall?
A. In the fall, it was pretty hot.

Mr. Neal: I now skip to the following question on page 72 (reading):

"Q. That four or five men that you speak of being around the place at the time the building was burned, do you know their names?
A. Clint Burris was in that bunch.
Q. Who else?
A. I don't know any of the rest of their names.
Q. Was that the four or five men you saw sitting around there and never worked any? A. Yes, sir.
Q. Did Clint Work? A. Not that I ever saw.
Q. You never saw any of the five men work?
A. No, sir, never did.
Q. Did you work at the mine your father was interested in?
A. Yes, sir.
Q. What did you do? A. Hauled coal.
Q. You didn't dig coal? A. No, sir.
Q. You didn't belong to the miners' union? A. No, sir."

Mr. Neal: We waive the remainder of the cross examination.

Mr. Hull: I will continue the reading of the cross examination.

2780 "Never have belonged to it?
A. No, sir, and never will if I can't join something better than that, I don't want to join anything.
Q. You don't feel kindly towards them, do you?
A. No, sir, I don't.

Q. In fact you don't like the miner's union, do you?
A. The miner's union might be all right but them anarchist aint.
Q. You don't like the members of the miner's union?
A. No, sir, I don't.
Q. None of them?
A. None of them down in that country.
Q. Is this the first time you have ever testified in relation to the trouble down there? A. Yes, sir.
Q. You have never been a witness before? A. No, sir.
Q. Who did you first tell that you knew anything about this case? A. Never did tell anybody.
Q. Never told anybody? A. No, sir.
Q. Have you talked with a man named Curtis about this case?
A. I don't know whether I have or not, I might know him if I ever seen him.
Q. Have you talked to this man Finley sitting here about this case? A. No, sir, I haven't.

Redirect Examination

By Mr. Hull:
Q. It is a fact as far as you know that I didn't know what you were going to testify to here this day?
A. No, sir.
Q. And it is a fact that I never talked to you or anybody? A. No, sir.
Q. You say you knew that they were union miners
2781 there that you heard— A. Yes, sir.
Q. You heard talking about their being union workers?
A. Yes, sir, they weren't particular about talking before anybody."

Mr. Neal (reading):

"Recross Examination

By Mr. Grant:
Q. Did they say what union they belonged to?
A. No, sir.
Q. Then you don't know what union they belonged to?
A. Don't remember of anything like that.
Q. Did they belong to the United Mine Workers of America? A. Yes, sir.
Q. Or to the United Mine Workers of America, District 21? A. Search me about the district.
Q. How do you know they belong to the United Mine Workers of America?

A. I heard them talking about it many times.
Q. Heard them say they belonged to the United Mine Workers of America? A. Yes, sir.
Q. Who said that?
A. Grant Burris and John McNiche and all those boys down there.
Q. Just name the ones you knew. Is that all you know by name?
A. That's about all I know right now."

2782 Mr. Hull: If the court please, we now offer in evidence the deposition of W. B. Kissinger, taken at Joplin, Missouri, on the 12th day of July, beginning on page 79.

Mr. McDonough (reading):

"W. B. KISSINGER, of lawful age, being duly sworn, upon his oath, to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

By Mr. McDonough:
Q. Where do you live, Mr. Kissinger?
A. Webb City, Missouri.
Q. Your initials are W. B. Kissinger? A. Yes, sir.
Q. What business are you engaged in?
A. Working in the mines.
Q. With what company are you?
A. Unity Mining Company.
Q. Did you ever live in the State of Arkansas?
A. Yes, sir.
Q. In what part of the state did you live?
A. I lived at Bonanza and Hartford.
Q. What business were you engaged in there?
A. Part of the time mining and part of the time in the insurance business.
Q. Did you ever work for the companies, or either of them, known as the Bates Denman Companies?
A. I worked a short time for the Bache Denman Company, or the Mammoth Vein.
Q. At what place? A. Mammoth Vein.
Q. Were you in that country about the first of April?
A. What April?
2783 Q. 1914? A. Yes, sir.
Q. Were you present at the time of the meeting out at the school house? A. No, sir.

Q. Were you working for the Bache-Denman Companies at that time? A. No, sir.

Q. Where were you working on July 17th, after that?

A. I was working for the Lafayette Company.

Q. Where were you located? A. Hartford.

Q. Do you know where the R. B. Davis Hardware Store is in Hartford? A. I know where it was.

Q. On the evening of July 16th, the day before what we call the "battle" state whether or not you were in the Davis Hardware Store?

A. I was in there; yes, sir, I was in there.

Q. State whether or not any union coal miners came in there that evening and called for cartridges?

A. I dont know whether they were union coal miners or not, or whether they were miners; I saw them buy cartridges.

Q. Did you know any of the men? A. No, sir.

Q. What kind of cartridges did they buy?

A. Shot gun shells.

Q. Did they make that call for any other kind?

A. No, I didn't pay any attention, only I seen them get the shells.

Q. What time in the day was it?

A. In the evening.

Q. Did you hear what was said when they called for the shells? A. No, sir.

Q. Were any of them rifle shells?

A. No, sir, not that I saw or paid any attention to.

Q. Did you examine the shells yourself?

A. Yes, sir, I examined one box; a fellow opened a
2784 box and I noticed they were peculiar looking.

Q. How were they loaded? A. Looked like—

Q. Do you know where the Hartford Hardware Store was at that time? A. Yes, sir.

Q. State whether or not you were passing by that store about two o'clock that night?

A. I dont know what time; somewheres after midnight, and there were parties in the store.

Q. Was that a usual or unusual thing for the store to be open at that time?

A. It was really unusual in a small place like that.

Q. What were the people doing?

A. I never paid any attention; I passed by and went on down the street.

Q. Were any of the people going in or out of that store?

A. Yes, sir.
Q. Could you tell what they were buying?
A. No, sir.
Q. Do you know Tom Smoot? A. Yes, sir.
Q. What was he doing?
A. He was in the store; I passed by and noticed him in there; I never stopped.
Q. Was he one of the owners of the store?
A. He was supposed to be, I think.
Q. State whether or not he seemed to be transacting business in there? A. He was in the store.
Q. That was a hardware store?
Q. Yes, sir, furniture and hardware.
Q. Could you tell whether or not they were selling shells? A. No, sir.
Q. Did you make any inquiry of any of them as to what they were doing? A. No, sir.

2785 Q. Did you, yourself, at that time, have any knowledge that attack was to be made on the Bache-Denman mine the next morning or that night?
A. No sir.
Q. Did you see any men leaving Hartford that night?
A. No, sir.
Q. Did you see any men on the street with guns?
A. Yes, I saw some men on the streets with guns.
Q. What kind of guns?
A. I never paid any attention, some shot guns and some Winchesters.
Q. Did you on the early morning of the 17th get any information about the battle that was going on over at the mines?
A. I heard it there in town that they were fighting out there, and we saw the smoke along: the tipple was supposed to be burning out there.
Q. Did you hear any—get any information about who was engaged in the battle?
A. I heard along up in the day, I couldnt say what time, that a fellow named Slankard, our Constable, was killed.
Q. How did he go out there, if you know?
A. I dont know.
Q. Did you go out to the scene of the battle?
A. I went out about two o'clock that afternoon, in an automobile.
Q. Who was with you?
A. A fellow named T. T. Bumpus and Charley Dalton.
Q. Did you see Slankard while you were out there?
A. No, sir.

Q. Did you see any other officers?
A. Not that I remember of.
Q. Did you know of any of the officers trying to put down the riot, the shooting that was going on?
A. I never seen them; I heard them say they were going to.
2786 Q. Do you know about what time in the morning that shooting began? A. No, sir.
Q. Could you hear the gun shots from the mine?
A. No, sir, I couldnt hear them.
Q. What time in the morning did you first see the smoke coming from that direction?
A. It must have been nine or ten o'clock.
Q. When you got there at two o'clock, state whether or not the tipple was on fire?
A. Number Four tipple was on fire at that time.
Q. To what extent was it burning?
A. Oh, it was pretty well burned; it was all on fire.
Q. Anybody about the tipple at that time?
A. I never went down.
Q. Did you examine for gun shots anywhere on the property there?
A. No, sir. I never went down there that evening at all; I stopped up in the road.
Q. How far away from the tipple did you stop?
A. Between a quarter and a half of a mile from where we were in the road.
Q. Were you out by the school house? A. No, sir.
Q. Did you see any signs of bullet holes in any cars or any other places around there?
A. I never got out of the automobile; we drove up, this fellow named Bumpus; this fellow Dalton was supposed to be a newspaper reporter and he wanted to get information.
Q. Did you meet any men going back?
A. There was a good many people—I dont know how many, that were going towards Hartford. I dont know whether they were going to Hartford.
2787 Q. Were they armed? A. No, sir.
Q. Did you see any guns?
A. I saw one of the shot guns.
Q. Which way were they going that had the shot guns?
A. Towards Hartford.
Q. Did you see any men armed with rifles about the mine? A. No, sir.
Q. Or any where in the woods along there?
Q. Was a time like that usual or unusual occurrence?
A. No, sir.

A. It was an unusual occurrence. If it happened every day or two we would be in War.

Q. Then you learned before you went back whether Slankard was dead or alive?

A. I heard somebody say Slankard was all right.

Q. You didnt see Slankard out there at all?

A. No, sir.

Q. You didnt see him in Hartford that morning?

A. No, I saw him that evening.

Q. What time in the evening did you first see him?

A. Oh, I dont know; along towards sun down.

Q. State whether or not there were a good many union miners living in Hartford at that time?

A. Centainly, it was a mining camp, and I expect the biggest part of the town was miners.

Q. About how many men, altogether would you say you saw going in the direction of Hartford that day?

A. Oh, I wouldnt have much idea; oh, about one hundred or two hundred men,—fellows riding and in automobiles; I wasnt paying much attention; there was an unusual amount of men to meet on the road.

2788 Q. How long did you continue to live in Hartford?

A. Why my family was there until the following May after that.

Q. Where did you go then?

A. I would go home every week or two; I worked for an insurance company until the first of September, and then I leased a coal mine at Kevener, Oklahoma, and I would stay down there and go home on Saturday night, sometimes every week, and sometimes every two weeks.

Q. Do you know Charles Gossett, the Constable that lived there about that time? A. Yes, sir.

Q. Did you have any conversation with him about Bache-Denman operating those mines on the open shop plan?

A. That was the general talk in that country for several months; most any man you met would talk about what would be the outcome of the trouble.

Q. What was said?

A. Mr. Gossett made the remark he didn't believe they could operate it on open shop plan.

Q. Why?

A. Well, I don't know; there was a good many people thought the same thing.

Q. What did they say would be done to them?

A. The property would be destroyed like has occurred all over the country for the last thirty years when disputes like that came up.

Q. Where did Mr. Gossett live?
A. Near Hartford, or did, at that time.
Q. Did you ever have any conversation with Slankard about it or hear him make any statements about it?
A. No, sir, Slankard and I never have much to say to each other.
Q. State whether or not the majority of the laborers in there about Hartford are union miners, or were at that time?
2789 A. Yes, sir, they were at that time.
Q. Did you know of any organization there other than the United Mine Workers of America, called the miners' union? A. Oh, there are other unions there.
Q. Did you know of any other Miners' union other than that one?
A. No, sir, I didn't belong to the union at the time I was working for an Insurance Company.
Q. You had no knowledge of any other except that one, the Miners' Union?
A. No, sir, I had no occasion to be interested because I wasn't working in the mines at that time. I heard something of the Western Federation of Miners trying to organize there, but whether they was or wasn't I don't know.
Q. Mr. Kissinger, in October, 1914, state whether or not you have any knowledge about some trouble against the officers, the United States Marshals?
A. I don't know, I came home one day from Heavener and got off the train at Hartford. There were twenty-four or five men there in Hartford and they claimed the United States Marshal was going to take the men away and they weren't going to let him do it.
Q. Were you acquainted with the men that said they weren't going to let him do it? A. I wasn't.
Q. Were you acquainted with the ones that had the guns?
A. Bill Reid and Dave Brance and a fellow we called Champion.
Q. Was George Reid with them?
A. No, sir, I saw Will Reid.
Q. Was he a union member? A. I don't know.
Q. Was Dave Brance there too?
A. They were miners and I supposed belonged to the union.
Q. Did Brance have a gun also? A. Yes, sir.
Q. What kind of guns did they have?
2790 A. I never examined them.
Q. Were they in the nature of rifles or shot guns?
A. They were short looking guns.

Q. Did you hear them say why the were there?
A. No, sir.
Q. Had you at that time heard of men being taken away from the United States Marshal?
A. That was the talk at the depot, they were there for that purpose.
Q. Do you know they carried out their purpose?
A. No, sir, I don't know.
Q. Did you see the United States Marshals yourself?
A. I saw Black.
Q. Did he have any men under arrest?
A. I don't know.
Q. Do you know whether any men were taken away from him or not? A. No, sir, all I know is hearsay.
Q. Did Mr. Black go away on the same train with you?
A. No, I got off at Hartford.
Q. Did Mr. Black go on to Fort Smith?
A. I don't know where he went.
Q. He was deputy marshal?
A. He was supposed to be; that is what they told me."

Mr. Covington: We waive the cross-examination.

Mr. McDonough: We waive the reading of the redirect examination.

2791 Mr. Hull: If the Court please, we next offer in evidence the deposition of H. H. York, taken at Joplin and Webb City, Missouri on July 23rd and 24th, 1917. (Reading):

"H. H. York, of lawful age, being duly affirmed, testifies as follows:

Direct Examination

By Mr. Hull:
Q. What is your full name? A. H. H. York.
Q. Where do you live?
A. I am now located in Webb City.
Q. What is your occupation? A. I am a minister.
Q. How long have you been a minister?
A. I have only been ordained for about two months.
Q. How long have you been doing the work as minister?
A. For about four years.
Q. Where did you live in the Spring and Summer of 1914?
A. 1914, that was the time of the trouble, was it?
A. Yes. [A.] I was staying at Hartford, Arkansas.
Q. How long had you been living there?

A. I was not there in the Spring; I came to Hartford in June, I believe, 1914.

Q. Had you lived there prior to that time?

A. Yes, sir, I guess three years.

Q. And how long had you been away when you came back in June?

A. Well, let me study just a little bit; I had been away, I believe I left sometime in April and came back in June.

Q. Were you doing the work of a minister at that time, in the summer of 1914?

A. No, sir, I had, just before that, but I was then working in the mines.

Q. Where were you working?

A. At Number 4 Central.

2792 Q. How long had you worked there, since you came back in June?

A. No, sir, I have got the dates a little bit mixed up along there; I can't remember just exactly; I had only been working a short time.

Q. Were you a member of the union? A. Yes, sir.

Q. How long had you been a member of the union when this battle took place?

A. I had been a member of the union for a number of years, five or six years.

Q. You remember the time of the so-called battle at Prairie Creek Number 4? A. Yes, sir.

Q. Do you remember some meetings that took place a few days before the battle?

A. What do you mean, mass-meetings?

Q. Yes. A. I know something about one, was all.

Q. When was that held?

A. I don't know just what day it was; it was the first mass-meeting that was held.

Q. And about how many days would you say it was before the battle? A. About three or four days, I think.

Q. Where was it held?

A. We met in the ball-park; then there was a motion made and we moved across the railroad to a stand on the picnic ground, kind of a park.

Q. Who made the motion?

A. I don't know who made the motion now.

Q. Was there a chairman appointed at the meeting?

A. Yes, sir.

Q. Was he appointed before, or after, you moved?

A. After.

Q. Who was appointed chairman of the meeting?

A. Jim McNamara.

2793 Q. Do you know how that was done?

A. No, I don't remember the details of that; someone, I think, appointed him as he was President of the Local Union at that time; he generally took charge of all the meetings like that, anything that was done; I don't know whether it was a motion, or how.

Q. Who called the meeting?

A. I don't know, we came out at noon from the mines.

Q. Were you called out?

A. No, we was called out by the driver; he told us we were going to have it.

Q. You were called out of work in the mines by the driver at noon? A. Yes, just before noon.

Q. Did everyone go out?

A. I suppose they did; the mine shut down.

Q. Shut down so you could go to the mass-meeting?

A. Yes, all the diggers; I don't suppose any of the company men attended.

Q. But the mine shut down so you could go over and attend this meeting?

A. Yes, had to shut down because the men went out.

Q. About what time was it after you got to the first meeting before you adjourned?

A. Something like 1.:30 or 2:00 o'clock.

Q. How long did the mass-meeting last?

A. Well, about an hour I guess.

Q. Did Jim McNamara state the purpose of the meeting?

A. Yes; well, I guess you would call it that; he said we knew the nature of the meeting; we all understood what we were going there for when we went.

Q. What were you all going there for when you went?

2794 A. At that time, there had been some trouble. There was some shooting took place between the union and non-union men out there at Camp Beulah; that was what started the talk; and then they was talking about what took place at the mine that morning before we went down.

Q. What had taken place at that mine that morning before you went down? A. Agitation.

Q. At your mine? A. Yes, sir.

Q. What was that mine? A. Number 4, Central.

Q. And on top, you held a little meeting there?

A. No, there was just talk among the men before they went down.

Q. Was the meeting talked about at that time; that is, called a meeting.

A. No, sir, I don't remember anything about it.

Q. Now just state a little more explicitly what you were going over to the meeting to do.

A. Everyone seemed to understand it, because they had been talking among themselves about the trouble and of course it was understood that they were going to do what was best to do. I suppose that some of the union men wanted to go down there and do what they did, later on. I am saying just the best I can about that; I don't know anything except that we just went over there.

Q. To see what was best to do about the trouble; what trouble do you mean?

A. It was shooting that took place at Camp Beulah.

Q. That is, Frogtown? A. Yes, sir.

Q. Between the union and non-union men? A. Yes, sir.

Q. Now state as closely as you [caneremember,] what Jim McNamara said when he got up and made his opening speech.

A. He didn't say very much; he said, "You know the
2795 nature of the meeting", and that was about all; and then it was open for remarks and they called Pete Graham upon the stand and he made a speech; that was about all.

Q. Who was Pete Graham?

A. He was a man that lived at Camp Beulah.

Q. Was he a miner? A. Yes, sir.

Q. Member of the union? A. Yes, sir.

Q. Where did he work?

A. Don't know where he worked.

Q. What did he say?

A. Well, he said a great deal but I don't remember just what he did say, only he advised them to not use violence; to be deliberate in everything they did.

Q. Who else made a speech? A. Charley Robinson.

Q. Is that the man who had since died?

A. I don't know whether he has died or not.

Q. The father of Sandy Robinson? A. Yes, sir.

Q. What did Charley Robinson say?

A. I don't remember very much what he said, but he was only just telling some things that happened about a non-union man coming to his house and a little trouble that existed. He related the trouble that took place between the union men and the non-union men at Camp Beulah the morning before.

Q. What did he advise doing?

A. He was quite radical. I don't know now whether or not he suggested any certain thing or not.

Q. What do you mean by he was quite radical?

A. Of course he was a union man and he wanted to take some steps, it [seemd], in his talk, and I would judge that he wanted to go down there and clean up on them.

Q. You gathered that from his remarks?

2796 A. Yes, sir.

Q. Did anyone else make a speech?

A. Yes, my father?

Q. What are your father's initials? A. J. G. York.

Q. Was he a member of the union? A. Yes, sir.

Q. I don't think I asked you, do you know whether Charley Robinson was a member of the union?

A. Yes, sir, he was a union man.

Q. What did your father say, Mr. York?

A. Well, he said; he suggested that we get a writ for the men who was in that shooting at Camp Beulah, and go down and arrest them, was all I remember him saying. Of course he talked quite a while but I don't remember what he said.

Q. Do you remember any circumstances about a telegram having been received just before that meeting?

A. No, I don't know anything about it.

Q. You don't remember something about a telegram that Jim McNamara received from Pete Stewart, do you?

A. That was during the time of the meeting, was it not?

A. I dont' know; I am asking you; what is your recollection of that telegram?

A. He got a telegram while he was talking.

Q. Who was "he"? A. Jim McNamara.

Q. From whom was that telegram?

A. It was Pete Hanraty; I don't know which one it was; it was the one who was District President at that time.

Q. It was the one who was District President at that time?

A. Yes, sir.

Q. Do you remember what that telegram said?

A. No, I didnt' read it; he only stated it before the public, what it said but he didn't read it?

2797 Q. What did he say that it said?

A. He said that he advised us over the telephone—it was a telephone instead of a telegram—to not make any move at all; that there was some men in jail at that time at Fort Smith, and that they were only waiting to get some more evidence [—] the men, and if we didn't wait it would only make matters worse, and he advised us to not do anything.

Q. How many times were you called out from work and advised what would be done about this Frogtown matter?

A. Only once that I remember of.

Q. And that was three days before the battle?

A. Yes, sir, something like three days.
Q. Did you go to work the day before the battle?
A. I dont' remember about that, whether we went to work the day before the battle or not. There was about three days that we didn't work there on account of the trouble, but I dont' remember whether we went to work the day before the battle or not.
Q. You don't remember whether you went to work the day before the battle, being called out again that morning, the morning before the battle? A. No, sir.
Q. Were you in Hartford the night before the battle?
A. Yes, sir.
Q. What did you see there?
A. I didn't see anything; I didn't know anything about it until the next morning; I was at home at that time.
Q. Didn't you go into town that night? A. No, sir.
Q. Do you remember my seeing you, Mr. York, sometime?
A. Yes, sir.
Q. To refresh your recollection, do you remember tell-
2798 ing me that you saw several hundred men in Hartford that night with guns? A. No, sir.
Q. Did you see any men that night, going in the direction of Number 4? A. No, sir.
Q. Do you remember my asking you if you saw—"Did you see in what direction these men with guns were going"? and you said "In the direction of No. 4"?
A. I didn't see any men with guns at all.
Q. You don't remember stating that to me? A. No, sir.
Q. What did you see the next morning, if anything, the day of the battle?
A. Well, I didn't see anything, only just a quite a few people on the streets.
Q. What time did you go out on the street that morning?
A. Well, I don't know; something like ten o'clock.
Q. Did you see any men with guns at that time?
A. Yes, I seen two or three shot-guns.
Q. Now, without telling the names of these men, who were they; were they miners?
A. Well, I don't know whether they were or not; I know one of them was not a miner that I seen with a gun.
Q. Would you say that you didn't see any men with guns that were miners? A. On what day?
Q. On the day of the battle.
A. I would say that I don't know; I seen some men with guns but I don't know whether they were miners or not; only I know that one I seen was not a miner, with a gun.

Q. Mr. York, do you remember my asking you whether you would be willing to tell the names of the men that you had seen and your answer "Well, I don't know whether I
2799 would or not you must realize that if I tell these things it is telling it against my own father; he is a good union man; if I was telling them, I would tell them even if it went against my father; it would make all Hartford my enemies." Do you remember telling me that? A. Yes, sir.

Q. Now just tell the Court who those men were that you had in mind, when you said that.

A. I don't know just what you want me to tell. You said you didn't want any supposition, and I told you I didn't see anything and I told you I wasn't on the streets and I didn't see any men that night. I don't know anything.

Q. Mr. York, what men did you say you had in mind if you was put under oath you would tell the truth; that you didn't like to tell the names; what men did you have in mind when you said that to me when I saw you that night?"

Mr. Hull: Do you want to press that objection, Mr. Covington?

Mr. Covington: Yes.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

"Q. What men did you have in mind, that you said you would tell about them, even if it went against your own father?

A. If you remember, you was asking me about a great many men and things that you haven't asked me here; You was asking me about that there. I supposed that was the evidence you wanted and only positive evidence. I don't know anything; I haven't any particular evidence; I supposed that my father was in the battle, is what I had reference to
2800 when you was asking, and of course I don't know anything; I didn't see it.

Q. Who was at the meeting at the ball-grounds, that meeting where Jim McNamara presided?

A. I don't remember but a very few; I remember Robinson and McNamara and that is about all I remember .

Q. You remember Pete Graham? A. Yes, sir.

Q. Remember your father being there? A. Yes, sir.

Q: Remember any others?

A. Yes, I remember John Manick.

Q. And who else? A. That is all I remember.

Q. So John Manick was the only one in the audience that spoke? A. Yes, he spoke.

Q. What did he say?

A. Didn't say very much. He only stated something about some men being in jail at Greenwood at that time; he only said a few words.

Q. Did he say who the men were that were at Greenwood?

A. No, [nsir], he did not.

Q. What did he suggest doing about those men who were in Greenwood in jail?

A. Don't remember that he made any suggestion about it.

Q. Why did he speak of them?

A. It came up because they were talking about the men there and that were in Fort Smith jail, I think.

Q. What relation did that have to the subject at the meeting?

A. It all came up under the same head and they received a telegram about that time about these men that were in jail at Fort Smith, or telephone, I meant to say.

Q. What did the telegram or telephone say?

A. He didn't read it.

Q. From Pete Stewart? A. Yes, sir.

2801 Q. Did you go out to the mine the next day?

A. Yes, sir.

Q. See any men coming back toward Hartford?

A. Yes, sir, going both ways all day.

Q. Did you see any miners going and coming both ways?

A. Yes, sir, all classes going both ways.

Q. With guns?

A. No, sir, only saw about three men with guns.

Q. How many did you see going and coming?

A. I didn't count them.

Q. Roughly, approximately?

A. Going and coming all the time continually, some going in buggies and automobiles. I suppose I saw a hundred.

Q. Out of those hundred, how many were miners?

A. Most of them were miners, the whole town is miners.

Q. Were they members of the United Mine Workers of America? A. They were, if they lived in Hartford.

Q. In other words, there was no non-union men in Hartford? A. They didn't allow them to light there.

Q. Did you state how many men there were at the meeting, about how [man]? A. No, I didn't state.

Q. Will you, to the best of your recollection?

A. Just an estimate?

Q. Yes. A. About 200.

Q. Were they miners? A. Principally miners.
Q. And members of the United Mine Workers?
A. Yes, sir.
Q. Where did you all go after the meeting was over?
A. I went home. I suppose everybody else did.
Q. Did you see Jim McNamara the next day, the day of the battle? A. No, sir.
Q. Did you see Pete Stewart in Hartford that day?
2802 A. No, sir.
Q. Or that night?
A. No, sir, I don't know Pete Stewart.
Q. Do you know whether there was anyone wounded or killed in the battle?
A. No, sir, I don't know, I heard that there was.
Q. Didnt' see anybody wounded? A. No, sir.
Q. Didnt' see anybody after the battle, that had been wounded in the battle? A. No, sir.
Q. Was you over at Number 4 after the battle had taken place? A. I was over there, I guess, a month afterwards."

Mr. Covington: We waive the cross-examination, the reading of the cross-examination; that is simply repetition.

Mr. Hull: I will have to read a little of the cross-examination beginning at the bottom of page 51 (reading):

Q. You do say that Charley Robinson was somewhat radical, but you don't remember exactly what he said about it?
A. Yes, sir, that is what I said.
Q. That about the time that Jim McNamara was closing the meeting, or shortly after the beginnning of the meeting, that he received a telephone message from Pete Stewart, the President of the District?
A. No, sir, that isn't exactly what I said? We was talking and I didnt' know that they had any intention of bringing [to] meeting to a close until he received the telephone. After he received that there was a move made that we adjourn.
Q. Now, McNamara went to the Phone and came back and reported to the meeting that he had received a telegram from Pete Stewart to do nothing? A. Something like that.
Q. And to refrain from violence; didn't he use those words? No, sir."

2803 Mr. Hull: We next offer in evidence the deposition of H. M. Stroupe, taken at the same time. (Reading):

"HILBERT STROUPE, of lawful age, being first duly sworn, testifies as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Hilbert Stroupe.

Q. Where do you live, Mr. Stroupe?

A. I live at Franklin, Kansas.

Q. You are here in response to my request to come here and testify? A. Yes, sir.

Q. I saw you last night, didn't I, Mr. Stroupe?

A. Yes, sir.

Q. At your home? A. Yes, sir.

Q. And asked you to come over here to testify?

A. Yes, sir.

Q. And did I pay you, in advance, your mileage?

A. Yes, sir.

Q. And the per diem, that is, your witness fee?

A. Yes, sir.

Q. State, please, how much I paid you? A. Paid me $5.25.

Q. And that was as I explained to you?

Q. You didn't have the change.

Q. That was, as I explained to you, $3.70, or ten cents a mile for the thirty-seven miles, and $1.50 for the witness fee?

A. Yes, sir.

Q. And we couldn't make change, so instead of $5.20, I left $5.25. A. Yes, sir.

Q. Did you live in Hartford, Arkansas, in the spring
2804 and summer of 1914? A. Yes, sir.

Q. What was your business there?

A. I worked in the mines and worked on a farm.

Q. Did you have any other vocation? A. Yes, sir.

Q. What was it? A. I was a minister.

Q. Preaching in Hartford?

A. Yes, sir, preached there sometimes; most of the time was away; would go out of town, sometimes different places and different states.

Q. How long had you lived at Hartford prior to that time?

A. I moved to Hartford, if my memory serves me right, the 7th of August, twelve or thirteen years ago.

Q. In what mine had you worked in Hartford?

A. I worked in the Huffman mine, which was known as Mine Number 7 after the Central got it; worked in the Mammoth Vein; worked in Prairie Creek Number 4; worked at McKinney mine, the Central Coal Company's Number 10, and at the Hart mine.

Q. Were you working at the mines on the 16th and 17th of July, 1914? A. No, sir.

Q. How long before that had you worked in the mines?

A. Had not worked any since along in the spring.
Q. Were you a member of the union at that time?
A. I think I was, yes, sir.
Q. How long had you been a member?
A. I had been a member of the union for about fourteen years, fifteen.
Q. Are you a member of the union now? A. Yes, sir.
Q. Do you remember the time of the so-called battle at Prairie Creek? A. Yes, sir.
Q. Did you go out to the scene of the battle on the morning that it took place?
A. No, sir, never went anywhere about where the battle was at.
2805 Q. State where you did go in reference to the battle?
A. First, in the morning I was in the field; didn't know anything about the battle until I saw some smoke; I had went down town and taken some vegetables down there, and I said, What was the matter? And they said "Some fighting out there."
Q. What time in the morning was it?
A. If I am not mistaken, it was in the neighborhood of ten o'clock, and something was said about the women and children out there.
Q. What women and children?
A. Those people that was working there at this mine.
Q. That was working at the non-union mine?
A. The men that were working at the mine.
Q. The families of the non-union miners?
A. Yes, sir, and Mr. Conway said that they ought to be looked after.
Q. Who was Mr. Conway?
A. The Mayor of the town; and I went and got my brother and got John Stevens; he says, "We are going out there to look after those women and children." And we picked up another fellow by the name of Pattie; we took him and went out and hitched my mules in Frog Town.
Q. What time did you get to Frog Town?
A. We got to Frog Town, if my memory serves me right, about half-past ten o'clock, or eleven, something like that.
Q. Had you heard any shooting up to that time?
A. Not until I began to get out; I could hear a few shots after I had got about even with Number 7 Central, there.
Q. How far was that from Frog Town?
A. That was half a mile this side, between a half and a mile; I don't think it was three-quarters.
Q. How far was Frog Town from Number 4?

A. I would call it about a mile and a quarter.
2806 Q. And in what direction from Number 4?
A. Northeast, I think.
Q. State what you did after you hitched your mules up in Frog Town?
A. Went on up the hill and where the road turned off there at those mail-boxes, and we passed along right where the company store used to be, and the house that Mr. Argo lived in; he was the bookkeeper for the Mammoth Vein; it was burned down, and we went on to the tipple.
Q. What tipple?
A. Number 3 tipple. And we passed on by that and instead of going up by Number 3 Camp, we took right up the edge of the ridge.
Q. To what side of Number 3 Camp were you?
A. I was to the right, south.
Q. On the edge of Number 3 Camp?
A. Yes, sir; and while we was going up there, you could hear a few shots once in a while, maybe a dozen, and then they would stop a while. Mr. E. C. Green came to me and said he—
Q. Don't state what you heard. As a result of what Mr. Green said to you, what did you do?
A. I don't know whether I can tell that.

Mr. Covington objetcs to what Mr. Green said to the witness.

Q. You met Mr. Green? A. Yes, sir.
Q. And as a result of what he said, I ask you to tell me what did you do?

Mr. Covington objects to the question."

The Court: It does not call for what he said?

Mr. Hull: No.

The Court: The objection is overruled.

To which ruling of the court the defendants, and each
2807 of them, then and there duly excepted and still except.

Mr. Hull (reading):

"A. I went on up there and waited; there was a path that goes from the bottom, from where the "Goo-Goo Eye" is. Mr. Green—I had taken him with me—I says, "You go on up there and you get those folks; that woman is fainting up

there, you say?'' I says, ''You come on back here with them.'' And we staid up there something like an hour.

Q. You staid at the ''Goo-Goo Eyes'' fan-house?

A. No, sir, at the edge of this cliff.

Q. Who did he bring with him?

A. About twenty-two people, and one of the women was in a critical condition.

Mr. Covington objects to the answer of the witness as incompetent, irrelevant and immaterial as to whether the woman was in a critical condition or not.''

The Court: The question and answer may stand.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading):

''Q. Do you remember the names of any of these people?

A. Well, as I remember, there was one old man by the name of Johnson, and two boys, Daugherty.

Q. Do you remember the names of any of the women?

A. No, sir, there was some children belonging to Mr. Owens, Scaley Owens.

Q. Was his wife there? A. No, sir.

Q. What did you do with those people?

A. Put them in a hack and took them to Hartford to take care of them.

Q. How many did you put in the hack?

2808 A. Took six women and some little children.

Q. What did you do after you went to Hartford?

A. Took them to a place down there and provided them tubs in which to take baths, and got them clothes.

Q. Did you pass anyone on the road, either going to Number 3, or coming back? A. Yes, sir.

Q. Who did you pass? A. Don't know.

Q. How many people? A. A good many.

Q. Roughly estimating, how many people were on the public road? A. I couldn't do that; I don't know.

Q. Give your best recollection, your best judgment.

A. Probably 35 or 40 people.

Q. See any men with guns?

A. No, sir, none that was going.

Q. Did you see any men with guns that were staying?

A. No, sir.

Q. Did you see anybody with guns at all?

A. Only that morning, in the field.

Q. Where did you see them?

A. They was some Italians, I took them to be.
Q. How many were there? A. Four or five.
Q. Which way were they going?
A. Going towards Prairie Creek.
Q. That was in your own field, near your house?
A. About a quarter from my house.
Q. How far was your field from Number 4?
A. About, I expect, in the neighborhood of three miles.
Q. What time of day was that?
A. That was about eight o'clock, as well as I remember.
Q. What kind of guns, if you know?
A. Don't know.
2809 Q. You know the difference between a shot gun and a high power rifle?
A. That was so far away I couldn't tell.
Q. This shooting that you heard, are you sufficiently familiar with the sound of guns to know whether it was from high power rifles, or shot guns?
A. No, sir, didn't pay no attention to that.
Q. You spoke a moment ago, of seeing some smoke, was that from Number 3 tipple? A. I suppose.
Q. You went by Number 3 tipple, didn't you?
A. Yes, sir.
Q. Was it burning? A. It was burned down.
Q. It was smoldering about half past ten o'clock, wasn't it? A. Yes, sir, something like that.
Q. Do you know when Argo's house was burned?
A. No, sir.
Q. Was it smoldering when you went by it?
A. Yes, sir.
Q. Pretty well burned up?
A. It was burned down, as well as I remember.
Q. That is, still burning, smoldering? A. Yes, sir.
Q. Argo, you say, was the bookkeeper for the Bache-Denman Company? A. Yes, sir.
Q. Now getting back to Hartford, what do you say you did for those women and children?
A. We took them down there and got a doctor for this woman and some beds, and appointed a committee and got some wash tubs and went out and got some clothes.
Q. Do you remember who was on that committee.
A. This West's druggist's wife, I think, was one of them.
Q. What did that committee do?
A. Some of those women came in there; of course I wasn't back there, I couldn't tell. The children came out with clean clothes.

2810 Q. Do you know how much money was taken up?
A. No, I don't. I think the town bought their tickets; gave them $167.00, something like that.
Q. Tickets to where? A. Somewhere in Tennessee.
Q. When did the women and children leave?
A. I think it was Saturday night.
Q. Did these men, these Daughertys, go at the same time?
A. Yes, sir.
Q. Were their depositions taken before they went?
A. Mayor took some depositions, Mayor Conway.
Q. Where were they taken? A. There.
Q. Do you know who was present when they were taken?
A. No, sir.
Q. Do you know who the notary public was?
A. No, sir, I don't know which one he had.
Q. Ever seen those depositions? A. No, sir.
Q. When you were up there close to Number 3 Camp, was there firing going on at that time, [thos] shooting?
A. When we was coming back there was.
Q. About what time did you go back?
A. Little after 12:00.
Q. Where was that shooting going on?
A. Down towards Prairie Creek, on the other side there.
Q. Did you see the smoke from any guns? A. No, sir.
Q. Just heard the shooting?
A. Just heard the shooting.
Q. Didn't see any men shooting at all?
A. No, sir, I was fully three quarters of a mile from there and there was timber there.
Q. Could you tell where the shooting was coming from, or going to? A. No, sir.
2811 Q. As you went away from Number 3, did you see any men with guns? A. No, sir.
Q. Did you meet any people?
A. I met people as I came through Frog Town, going out there.
Q. Did you go through Prairie Creek Camp?
A. No, sir.
Q. How many shots do you suppose you heard while you were there at Number 3 Camp? A. I don't know.
Q. Roughly estimate the number.
A. I wouldn't know how to begin; there was a good many shots fired right along about 12:00 o'clock.
Q. For how long did that shooting last?
A. Oh, fifteen or twenty minutes.
Q. Pretty continuous for fifteen or twenty minutes, was it? A. Yes, sir.

Q. Would you say there was a dozen shots, or how many, roughly?

A. Oh, I don't know how many was fired, I can't tell.

Q. Were they fired in volleys, or singly?

A. Went like rifles a cracking, is all I know about it; one after another, for as much as ten or fifteen minutes.

Q. Who went over there with you, you say?

A. My brother and Mr. Pattie.

Q. Did you meet anyone else there that day?

A. No, sir, never paid any attention; just went out there.

Q. In the few days preceding the battle, Mr. Stroupe, did you attend any mass meetings? A. I went to one.

Q. Where was that?

A. That was just below my house; it was what was called the park, where they held their picnics.

Q. Picnic ground? A. Yes, sir.

Q. Is that across the road from the ball grounds?

A. Yes. sir.

2812 Q. Across the track? A. Yes, sir.

Q. What day was that meeting held?

A. I don't know; either Monday or Tuesday; it lasted maybe five or ten minutes.

Q. If the battle was on Friday, this was the Monday or Tuesday before the battle? A. Something like that.

Q. What happened at that meeting? What did you see?

A. I never heard anything, only there was one man got up and said something about Frogtown being shot up.

Q. Who was that man?

A. Graham, I believe, was his name; and just about that time, somebody came and said they wanted the chairman of the meeting at the phone; he said that the president of the district, Mr. Pete Stewart, or the Secretary of the district, wanted him at the phone; he went to the phone and came back and said, "We will dispense with this meeting at once," and they adjourned the meeting.

Q. Do you know who was the chairman of that meeting?

A. Jim McNamara.

Q. Did he say what the message was, over the telephone?

A. He never said a word, only they would dispense with that meeting, it might cause [come] trouble, and not to hold a meeting at all.

Q. McNamara said that? A. Yes, sir.

Q. Did he said he had heard that advice from Mr. Stewart?

A. Yes, sir, I believe it was; and the meeting adjourned right then.

Q. Was Pete Graham the only man you heard make any speech?

A. Yes, sir, but it seems to me like there was a one-eyed man got up and said something.

Q. What is your best recollection of what Graham said?

2813 A. He told us about the place being shot up and he said he thought booze was the cause of the whole business; that these fellows had been buying booze of the Italian women near there, and the women had went to them and told them not to sell them any more booze.

Q. Who told them that?

A. Some of these people went to this woman and told them not to sell any more booze or they might come down there and cause trouble; so they came back and they wouldnt let them have it.

Q. Are you stating now what you know, or what you have heard?

A. Just what I heard; you asked me what he said.

Q. If that is what he said.

A. That is what he said at the meeting.

Q. What did Mr. Graham suggest, if he made any suggestion, as to what should be done?

A. He never made any suggestion at all, because he was a good, straight man.

Q. Did you hear any suggestions made at that meeting as to what should be done? A. No, sir.

Q. When did you hear about the meeting?

A. I seen the people gathering from my house.

Q. That was the first you knew about it?

A. Yes, sir.

Q. You know who called the meeting? A. No, sir.

Q. How many were there?

A. A good big crowd.

Q. About how many?

A. I suppose 200 or 300.

Q. Without stating the names, who were they; who made up the crowd?

A. I couldnt tell you; some I didnt know and some that I knew.

Q. Did you see some miners there?

A. Yes, sir, I saw some miners; made up of miners."

2814 Mr. Covington: We waive the cross-examination.

Mr. Hull: If I remember, there is just one question and answer that I want to read of the cross-examination. It is the last question on page 147. (Reading):

"Counsel has questioned you particularly about your connection with the trouble at Prairie Creek Number 4, alleged to have occurred on July 17, 1914, asked you all you did, who you saw on that day, what was said, and your action in taking the women out of the non-union camp at Prairie Creek; if you had been engaged in a career of murder and burning of property, was there anything to hinder you murdering the women and children you took out of there that day? A. No, sir.

Q. Was there anything to hinder you killing the men that you took away from there? A. No, sir.

Q. Were you armed?

A. Yes, sir, taking a shot gun.

Q. Taking a shot gun? A. Yes, sir.

Q. Along in your wagon? A. Yes, sir.

Q. Brought them out? A. Yes, sir.

Q. Was there anyone interfered with you to keep you from killing them? A. No, sir, none at all."

2815 Mr. Hull: We now offer in evidence the deposition of W. C. Harp, taken at the same time. (Reading):

W. C. HARP, of lawful age, being first duly sworn, testifies follows:

Direct Examination

By Mr. McDonough:

Q. What are your initials, Mr. Harp? A. W. C.

Q. Where do you live? A. I live here in Joplin.

Q. What buiness are you engaged in?

A. I am foreman at the mine, Tulsa Lead & Zinc Company.

Q. Did you ever live in Hartford, Arkansas?

A. Yes, sir.

Q. Were you living there at the time of the mine troubles in 1914, June and July? A. Yes, sir.

Q. Were you living there at the time of the so-called battle, on July 17, 1914?

A. Yes, I was there all during 1914.

Q. What business were you engaged in at that time?

A. I was in the grocery and meat business.

Q. I wish you would state whether or not on the morning of that battle, July 17, 1914, you were called upon by a committee of union miners requesting you to close your house of business on that day?

A. Well, I dont know now what date that was.

Q. Well, without reference to the exact date, you remember the date when the battle took place, dont you; you remember the battle?

A. Well, this request was made, but I dont think it was made on the day we would speak of the battle.

Q. Well, when was it made with reference to that date?

A. I think it was made a day or two maybe before; however, there was a little trouble out there on the day that we were requested to close.

2816 Q. By whom were you requested to close?

A. By a committee.

Q. A committee of whom?

A. Supposed to be union miners.

Q. Did you know them to be union miners yourself?

A. I knew they claimed to be.

Q. They requested you to close your store?

A. Yes, sir.

Q. For what purpose?

A. Well, to be with them in the, I suppose, raid.

Q. What did they say it was?

A. I dont recollect.

Q. A raid on what?

A. They was supposed to be closed to meet them there at Prairie Creek.

Q. Prairie Creek No. 4? A. Yes, Number 4.

Q. Did you close? A. Yes, sir.

Q. Did you go over there? A. Yes, sir.

Q. Were you over there on that day that the mines were burned? A. No, sir.

Q. Where were you on that day?

A. I was at Hartford.

Q. Were the business houses closed on that day?

A. No, sir, I think not. I was working for a fellow at that time; Let's see; no, they wasnt closed that day. I remember of hauling some freight on that day and seeing the smoke.

Q. Hear any guns on that day?

A. Yes, we heard guns.

Q. Could you tell anything about the number of guns that you heard? A. No, could not.

Q. Where was the smoke coming from?

A. Well, we guessed it to be from Number 4; I dont know just where it was from.

Q. Was it in the direction of Number 4?

A. In that direction, yes.

2817 Q. As to the stores being open on that day, that is July 17, have you any specific recollection on that sub-

ject, whether you closed your place of business, or whether you did not?

A. Well, the one date there; it was the first call that was made, the date that Looper was hurt, the stores were closed.

Q. Do you remember that date? What date was it?

A. No, sir, I do not.

Q. But the stores were closed on that day, were they, or were they not, at the request of this committee of union miners?

A. Yes, sir, that is why I closed, the understanding I had.

Q. There was some trouble on that day?

A. Well, there [—] quite a gathering there and that was the day that Looper was hurt.

Q. Looper was hurt that day A. Yes, sir.

Q. Is that the Looper that was the plaintiff in the suit against some people down there?

A. Yes, sir, Ode Looper.

Q. O. T. Looper? A. Yes, sir.

Q. Were you a witness in the Looper case?

A. No, sir.

Q. Were you over at Mine Number 4 after the burning?

A. Yes, sir.

Q. Was it destroyed?

A. Yes, sir, nothing there at all.

Q. What other property was destroyed, if any?

A. How is that?

Q. What other property besides that mine was destroyed, if any other? A. I saw the Mammoth Vein was gone.

Q. Any other property destroyed?

A. A lot of company houses were gone.

Q. What had become of them?

A. Seemed to have been burned.

Q. How long after the day of the battle were you
2818 over there at the mine, if you can tell?

A. I couldnt say; I was there quite often.

Q. Were you there on the day of the battle, after the burning? A. I dont know that I were.

Q. Was the fire still there in any of the buildings and mines when you were there?

A. No, sir, I saw no fire.

Q. State what examinations you made as to bullet holes in any of the property about the mines.

A. No, I made none.

Q. Mr. Harp, were you at any meetings, mass meetings, called or held on the night before the battle, or day or two before the battle? A. I was at a mass meeting.

Q. Where was it held?
A. It was held right west of town just across the railroad.
Q. Across the railroad from the ball park?
A. Right close to the ball park.
Q. Who presided at that meeting?
A. Well, I dont know exactly who.
Q. Did you know Jim McNamara?
A. Yes, he was one; Charley Robinson was one.
Q. You mean by one, what do you mean?
A. I mean that they were spokesmen.
Q. What did Robinson say?
A. Well, I couldnt state to you.
Q. Give your best recollection of what he said at that meeting?
A. I dont know whether I could tell you a word.
Q. I am not asking you for the words; I want the substance of what he said, what advice, if any, he gave.
Q. He meant to clean them up; that is what he meant.
Q. Clean up whom? A. What he called the "scabs".
Q. That was his advice, was it? A. Yes, sir.
2819 Q. Now what did McNamara say?
A. It was all of the same substance; that is, put them to flight; that was the substance of the talk.
Q. Did you hear anything at that meeting said about a telephone conversation with Pete Stewart, then president of the district?
A. Well, I couldnt tell a thing that was said in regard to it, but it was mentioned.
Q. About how long were you at the meeting, if you could tell?
A. I couldnt tell; I suppose I was there the whole time of the meeting.
Q. Were you at any other meeting, Mr. Harp, besides that?
A. I was at the meeting at Number 4 school house.
Q. I mean a day or two before the battle?
A. No, I think not.
Q. Mr. Harp, state whether or not you are a brother of Jesse A. Harp? A. Yes, sir, I am.
Q. State whether or not he was, at one time, County Judge of Sebastian County? A. Yes, sir, he was.
Q. Your brother lives here in Joplin now?
Q. Could you tell, Mr. Harp, give an estimate, your best judgment, as to the number of men that were at that meeting, at which McNamara spoke and Robinson spoke?

A. Well, there was quite a crowd; I guess from two hundred to three hundred; I am not much of a guesser at that though.

Q. That is your best estimate of the number, some two or three hundred? A. Yes, sir.

Q. Were there any others that made speeches besides McNamara and Robinson?

A. I cant call no names that did."

Mr. Covington: I will read one question on the first
2820 page of the cross-examination. (Reading):

"Q. Now can you tell a word that was said by anybody at that meeting? A. No, sir, I cannot."

Mr. Hull: Then I will read from the cross-examination beginning with the next question. (Reading):

"Q. Then what you have said about putting them to flight is not based upon anything that you heard said there at that meting at all, is at?

A. That was only the talk; that was just the speaking.

Q. What did they say, and who said it?

A. Robinson was one.

Q. What did Robinson say; you said you didnt hear a word that he said?

A. I didnt say I never heard a word.

Q. Tell us something he said.

A. I couldnt tell you a word that he said.

Q. Couldnt you tell a word that he said?

A. I dont know that I can.

Q. Can you tell a word that McNamara said?

A. Dont know as I could.

Q. Were you there when McNamara was called to the telephone? A. No, sir.

Q. You wasnt there? A. No, sir.

Q. Were you there when he came back, or came on the stage, or into the meeting?

A. I might have been, but not that I know of.

Q. Did you hear him making the announcement to the crowd, that he had received a telephone message from Pete Stewart that they must disperse the meeting?

A. I heard it mentioned something in regard to Stewart's message.

Q. I will ask you if that wasnt stated there by Mc-
2821 Narama, if McNarama didnt state that he had received a telephone message from Pete Stewart, the president of the district, to disperse the meeting and take no action and have no trouble?

A. There was mention made of Stewart's phone message.
Q. I am asking you what was said about it.
A. I couldnt tell you."

2822 Mr. Hull: We have one more deposition. We want to offer the deposition of George Simmons.

Mr. McDonough (reading):

"GEORGE SIMMONS, of lawful age, being first duly sworn, testifies as follows:

Direct Examination

By Mr. McDonough:
Q. What is your name? A. Simmons, George Simmons.
Q. Where do you live, Mr. Simmons?
A. Live in Webb City, Missouri.
Q. What business are you engaged in?
A. In shoveling ore and jack.
Q. For what company do you work?
A. I work for the Star Mining Company.
Q. How long have you been engaged in mining here?
A. About four months.
Q. Did you ever live at Hartford, Arkansas?
A. Yes, sir.
Q. State whether or not you were living there in the year, 1914? A. Yes, sir, I was.
Q. What kind of business were you engaged in at that time? A. Saw milling.
Q. Were you summoned here as a witness today?
A. Yes, sir.
Q. When were you served with a summons?
A. Day before yesterday.
Q. Summoned to appear here this morning? A. Yes, sir.
Q. State where your home was in Arkansas, whether in Hartford or near Hartford? A. It was in Hartford.
Q. How long had you lived there, Mr. Simmons?
A. Right in the city or in the vicinity; I went there in 1899, a mile from Hartford, and lived there about ten years,
2823 and then I moved into Hartford.
Q. Were you engaged in coal mining at any time while you were there?
A. Yes, sir, off and on all the time.
Q. For what company, or companies, did you work?
A. I worked for the Darnell:
Q. Bolen-Darnell?

A. Bolen-Darnell Coal Company and Prairie Creek Coal Company, and I think I worked a little for the Bache-Denman Coal Company and the Huffman Coal Company.

Q. While doing this work, were you a member of the miner's union? A. Yes, sir.

Q. Are you a member of the miners' union now?

A. No, I would be a member if I was there and paid up my dues.

Q. Did you ever work at Prairie Creek Number 4?

A. Yes, sir.

Q. When did you work there?

A. I didn't work there but just a few shifts; it must have been two years anyhow before it shut down; I worked only four shifts, three or four shifts, something like that, and a night shift; they put on a night shift and taken it off the same week; I have done a good bit of work at Number 3.

Q. Were these mines being operated with union labor at the time you worked there? A. Yes, sir.

Q. And during that time, you were a member of the union?

A. Yes, sir.

Q. Did you work any at coal mining in the early part of the year 1914?

A. I might have fired shots at the Bull-Moose. The Bull-Moose Company is just a little mine owned by three or four men there in Hartford. Whether I was working any time in the early part of 1914, I don't know; I might have
2824 worked until the mines got so slack; it was about that time that I fired some shots.

Q. Do you know whether the Bache-Denman companies, including Prairie Creek Mine Number 4, made an effort, in that year, to open up their mines with non-union labor?

A. I didn't work for them and I couldn't tell only by hearsay and I don't know anything about that you know; I don't know.

Q. Where were you on the day that the battle is said to have taken place?

A. I was at home until about 11:00 o'clock and then I walked down the line where they was doing the work.

Q. I wish you would describe what you saw, in your own way, beginning at the time you left Hartford, and describe all you saw.

A. All I saw was just a gang of men; when I got down to Number 4, there was a gang of men out about a quarter of a mile from Number 4, and I was standing about a quarter of a mile out the other way and then it would be a quarter of a mile to Number 4, and I was just standing there and they was

shooting from Number 4, to this gang of men and that gang of men was shooting towards Number 4. There was shots fired from both places and of course I just heard the shots. I could see a body of men out at one side, but I couldn't see nothing at Number 4. Finally, there was some bullets came whistling around by me pretty close, and I got down on the ground pretty close.

Q. Mr. Simmons, what direction were you from Mine Number 4 at that time, you say you were about a quarter of a mile away?

A. I don't know whether I can guess from the range of those mountains there at all about the directions, but I think I was nearly southwest.

Q. Were you, or were you not, upon a ridge or a hill?

2825 A. Well, I was right up against that ridge.

Q. And what direction then from you were the men that were firing, the man firing from the woods, or where they were firing from?

A. They was something like east, a little bit to the southeast.

Q. Could you see any smoke of guns there?

A. Well, I don't remember about looking for smoke at all, but the guns was firing rapidly at both places.

Q. Firing towards the mine and from the mine?

A. I couldnt' see how they was firing exactly, but then they was firing at both places.

Q. About how many shots did you hear first, I will ask you, from the woods?

A. I couldn't count it; it was just like pop-corn in a corn-popper, couldn't count the shots.

Q. Did you see the men that were in the woods?

A. Just saw a gang of men, that was all.

Q. About how many did there appear to be?

A. I couldn't tell that; there was just a big squad of men; some in behind buildings, woods, trees, they was just scattered around; you could just see them occasionally.

Q. They were about how far from you?

A. About a quarter of a mile.

Q. From you? A. Yes, sir.

Q. Were they on a higher ground than you, or were you on higher ground? A. We was all on kind of a level.

Q. Describe what the men were doing there that you saw?

A. I couldn't say exactly; I could just see the men you know; that's all; and I couldn't tell anything about

2826 what they was doing only I could hear the gun-fire.

Q. Could you see the men behind the guns?

A. Well, probably if I had looked and tried to have seen them, a thing of that kind, I might have seen them behind but I don't remember about that; I was just interested in seeing how things was going.

Q. What do you mean by "things"?

A. Well, how the shooting and the battle was going; curiosity led me down there.

Q. Were you armed? A. No, sir.

Q. Didn't have any gun yourself? A. No, sir.

Q. Now was that the only squad of men in the woods that were firing at that time?

A. There was men all over the whole country around there.

Q. Firing? A. No, sir.

Q. I mean was that the only squad of men that were firing at that particular time you mention now?

A. The only ones I heard.

Q. About what time in the forenoon was it?

A. That must have been noon or afternoon, I believe; that must have been in the afternoon.

Q. What time did you leave Hartford to go over there?

A. About 11:00 o'clock.

Q. About 11:00 o'clock? A. Yes, sir.

Q. And how did you get over there?

A. Walked down the railroad.

Q. Anybody go with you? A. Yes, sir.

Q. Who was it?

A. Fate Romine, and somebody else that I don't believe I can call to mind who it was.

Q. How long did it take you to walk down to the point
2827 where you stopped and witnessed the battle?

A. Something like forty or fifty minutes.

Q. Did you hear any guns before you stopped at that point? A. Yes, sir, we could hear guns from Hartford.

Q. Could you estimate, Mr. Simmons, if you can, I wish you would give your best estimate of about the number of guns that you heard fired altogether?

A. I couldn't do that. I couldn't do that at all.

Q. Why?

A. They was too thick and fast and they was fired off and on pretty well all day.

Q. What time in the forenoon, if you did hear them in the forenoon while you were in Hartford, did you first hear guns firing in that direction?

A. Well, I don't remember about that; don't remember about when I heard the first guns fired. The biggest thing

that I heard was an explosion, that was what attracted my attention more than anything else.

Q. What kind of an explosion?

A. It seemed to be a dynamite explosion.

Q. Where were you when you heard that?

A. I was at home.

Q. In what direction was that?

A. That was towards the mines.

Q. And did you go down to see what the explosion was when you got over there?

A. Just my curiosity led me over there.

Q. I mean did you go to the place where the explosion had occurred that day?

A. I didn't know where it occurred I couldn't tell what it was; or where it occurred.

Q. Did you see any smoke or burning buildings or anything of that kind?

2828 A. Yes, sir.

Q. What time did you see that?

A. Well, from about eleven o'clock on, I could see a smoke raise up.

Q. What was it burning?

A. Well, they was tipples burning.

Q. What tipples?

A. Tipple at Mammoth Vein; there was two tipples there that burned; and then there was dwelling-houses, some dwelling-houses.

Q. Did the tipple at Number 4, Prairie Creek, burn?

A. Yes, sir.

Q. Could you tell the number of houses and tipples were burned?

A. I couldn't tell the number of houses for I never was in the camp after the burning at all. That is, I have never been out where the dwellings was. I seen all the tipples that was burned; that is, all up in that vicinity. I seen Number 4 and the Mammoth Vein ; that is, the two Mammoth Vein tipples; and I never paid any attention to the Dallas tipple; and the Huffman tipple was afire but they put that out; that is the Central.

Q. That was operated at the time by the Central Coal & Coke Company? A. Central Coal & Coke Company.

Q. But the property belonged to the Bache-Denman Coal Company?

A. I don't know about that but I think it belonged to the Central.

Q. But it was the old Hoffman mine? A. Yes, sir.

Q. Do you know who bought the Hoffman mine?
A. I couldn't tell anything about that any further. While it was in the hands of the Receiver I done a little business with those people.
Q. Who was the receiver of that mine?
A. I don't know, but Bill Brown was boss there.
2829 Q. Wasn't Bennett Brown the receiver?
A. Might have been, Bennett and Bill was brothers.
Q. You don't know what interest, if any, the Bache-Denman Company had in that mine? A. No, sir.
Q. That mine, however, was put out? A. Yes, sir.
Q. But that mine was burning that day?
A. It was set afire.
Q. Now, Mr. Simmons, who were the men that were doing the firing in the woods; I don't mean to ask you their names but I want to ask you if you knew whether or not they were miners? A. It was a mixed-up gang.
Q. Any miners in it?
A. It was a mixed-up gang, the whole thing was in it.
Q. What do you mean by "the whole thing"?
A. I seen men that wasnt' miners nor wasn't implicated or interested in any way at all in the mines.
Q. Doing any firing? A. During the day.
Q. Did you see any miners doing any firing?
A. No, sir, I don't know who it was.
Q. Were you close enough to the men that were doing the shooting to recognize who they were?
A. Oh, no, I couldn't do that.
Q. Then you couldn't tell, could you, whether they were union miners or not?
A. No, I couldn't tell whether they were union miners that were firing or whether they were citizens.
Q. During the day, you did see some people there who were not union miners? A. Yes, sir.
Q. Who were they?
A. Fate Romine for one, went down there with me; he
2830 had nothing to do on either side, curiosity led him that way.
Q. Did you have anything to do on either side?
A. No, sir.
Q. What sides do you refer to; what sides do you mean when you refer to either side?
A. I mean union and non-union.
Q. Did you see any officers around there?
A. Not that day.

Q. They have officers down there, don't they?
A. Yes, sir.
Q. How many men, Mr. Simmons, do you think you saw that day from the time you left Hartford until you got back?
A. I don't know, there was quite a crowd of men.
Q. Give your best estimate as to the number, giving your best judgment about it as to the number of men you saw during the time that you made that trip.
A. Well, there must have been anyway 200 or more, that is, that I seen; I don't know how many more there was, but I must have seen as many as 200, first and last.
Q. State whether or not those men were armed.
A. Sometimes there would be a man armed and sometimes a man that wasn't armed.
Q. Could you estimate as best you can, about the number of armed men that you saw during the day over there on that trip?
A. No, sir, I never noticed very many armed; the crowd that I was in was curiosity-seekers; they was all along that road up there; sometimes there would be a man passing along with a gun.
Q. Was anybody engaged with you in your lumber business?
A. No, sir.
Q. Do you know Doc Moore? A. Yes, sir.
Q. Was he working with you? A. Yes, sir.
Q. Was he a coal-miner? A. A Driver.
2831 Q. Where was he on that morning, if you know?
A. I don't know, but he was working for me. I don't know whether he was working that day or not.
Q. Did you work any that day?
A. No, sir; I had some teams at work in the field that day and I don't know whether he drove one or not. I had two men working for me that time, him and Mr. Wheatley. I don't know whether Doc Moore was working that day or whether he was off, I couldn't tell; I don't remember.
Q. State whether or not you attended any meeting of any kind on the night before, or the day before, or two or three days before, this battle?
A. I attended two meetings; one at night just about dusk, and one in the evening, but I don't remember just how long before this.
Q. I wish you would tell me where the meeting was that was held about dusk?
A. That was at the Bolen pond, somewhere about where the Apostolic mission is now.
Q. What kind of a meeting was that?

A. Well, sir, I couldn't tell.
Q. Who called the meeting?
A. I couldn't tell, just a meeting there.
Q. Who was present there at that meeting?
A. There was a lot of miners present.
Q. Did anybody act as chairman of the meeting, or president of the meeting. A. Yes, sir, we had a chairman there.
Q. Who was he?
A. I don't know who the chairman was; I don't remember.
Q. State whether or not anybody made any speeches
2832 at that meeting.
A. I don't remember in particular, but one man that spoke anything, James Slankard was the only speaker.
Q. He was supposed to be the constable there wasn't he?
A. Yes, sir, he was the constable.
Q. Where was that meeting held? A. At the Bolen pond.
Q. Is that in the town of Hartford? A. Yes, sir.
Q. And can you tell whether that was the evening before the battle? A. No, sir, I can't, it was sometime close before.
Q. About how many men were present at that meeting?
A. I expect there was two or three hundred.
Q. What was the object of that meeting, Mr. Simmons?
A. Well, I suppose it was to get those non-union men out of 4.
Q. Was the matter discussed by anybody?
A. It was discussed, but I don't remember anyone at all but James Slankard.
Q. Did he say anything about getting those men out by force?
A. If I am not mistaken, they had raised trouble; the non-union men had raised trouble in Beulah camp, and he said he would lead the way to put a stop to it, but I don't know anything further than that; don't remember anything further.
Q. What did he say, if anything, as to what he meant by leading the way to put a stop to it?
A. I don't remember, only that he would lead the way to put a stop to those men coming into town and causing trouble, shooting.
Q. That was James Slankard? A. Yes, sir.
Q. The constable at Hartford? A. At Hartford.
Q. That was either the day before or the evening before the day of the battle?
2833 A. It was just a short time before; some of the non-union men had come into the camp and shot into the houses and caused quite a disturbance.
Q. That was the information given by Slankard?

A. The object of the meeting seemed to be to stop these folks coming into the camp and shooting it up.
Q. How were they going to stop it?
A. I don't know how, but he would lead the way to put a stop to it.
Q. Anybody else make a speech and explain what they meant by leading the way to put a stop to it?
A. Mr. Charley Robinson spoke some and I don't remember but a very little about his speech at all.
Q. Do you remember the substance of it, as to whether or not he said anything about destroying the mine and the camp of the "scabs?"
A. Not destroying, but they were going to put a stop to it.
Q. Going to put a stop to it? A. Yes, sir.
Q. And the way was to be led by Jim Slankard, according to what he said?
A. Yes, sir, he would lead the way to stop the tear up of the camp.
Q. Did anybody in the meeting say where they were going to lead the way to?
A. No, sir, if they did I don't remember.
Q. You were there? A. Yes, sir.
Q. And you were listening pretty well to what took place?
A. Well, I expect I was listening then, but that has been a long time ago and I was more of a curiosity-seeker than I was for anything else anyhow. It wasn't in my line of business so very much.
2834 Q. Who invited you to go to the meeting?
A. I don't know that anyone at all invited me, I just went; it was an open meeting; I just heard about it and went.
Q. Now as to the other meeting, where was that?
A. That was at the ball-park or the grandstand by the ball park.
Q. Did they have a chairman at that meeting?
A. I don't remember whether they did or did not; I think though they did.
Q. Anybody make any speeches at that meeting?
A. There was only one speech made that I know anything about that I remember; that is, I remember one man being up speaking.
Q. Who was that? A. Mr. McNamara, James.
Q. What did he say?
A. I couldn't tell you that; he was pretty warm.
Q. What do you mean by warm?
A. He wasn't in favor of thost people working in the mines at 4.
Q. That is, he wasn't in favor of "scab" labor at 4?

A. It seemed they wasn't in favor of those people that had commenced making so much trouble down there, if they just let them alone, they would soon try to run the whole country.

Q. Then what was his suggestion as to what ought to be done with them, if anything?

A. I don't remember, there was a good bit of noise.

Q. To refresh your memory, was there anything said there by Jim McNamara as to a conversation over the telephone between him and Mr. Pete Stewart?

A. No, sir, I don't remember anything of that kind at all.

Q. How many people were at that meeting?

A. Well, there was a good big crowd.

Q. Give your best estimate of the number that you think were there.

2835 A. There must have been 500 or 600 at that meeting.

Q. Do you know who called that meeting?

A. No, sir, don't remember now who called it.

Q. Was that the day before, or two days before, the battle?

A. Don't know how long before; it was just as big, what you might call a mass-meeting; I think that is what they called it.

Q. Mass-meeting? A. Yes, sir.

Q. Were they, or were they not, miners?

A. They was miners and merchants and farmers.

Q. Can you give the name of any man who was not a miner, that was there, either merchant or farmer?

A. No, sir, I don't believe I can. I just remember seeing a mixed-up crowd there, all the whole country around there.

Q. Anybody else make any speeches besides Mr. McNamara?

A. Yes, sir, two or three spoke but I don't know who they was.

Q. I wish you would explain if you can—I don't want to lead you—the substance of Mr. McNamara's speech as near as you can give it, explaining what you mean by it being a warm speech.

A. He is a pretty warm member of the United Mine Workers, is all I can tell you. He believes his way good and strong.

Q. Was there any other non-union or "scab" mine in that community at that time, except this Bache-Denman mine?

A. Not that I know of.

Q. Did you see Jim McNamara on the day of the battle?

A. No, sir.

Q. Did you see Jim slankard anywhere? A. No, sir.

Q. Do you know whether either of them was in command of either side at the battle?

A. Didn't see them, I couldn't tell you that.

Q. Do you know who was leading the union forces at the battle?

2836 A. No, sir.

Q. Have you told, as near as you can recall now, every circumstance that happened on the day of the battle?

A. Yes, sir.

Q. Do you know the difference between the sound of shot-guns and high-power rifles so as to tell whether the guns that you heard were high-powered rifles or shot-guns?

A. Well, I don't know, I have heard some pretty keen shots; they seemed to be keener than a shot-gun; I couldn't tell what kind of a gun though, might be just an ordinary Winchester.

Q. Let me ask you again, so as to get it in my mind, what time it was that you left there?

A. It must have been somewhere near four o'clock or after.

Q. You spent something like from 12:00 until 4:00 o'clock in that neighborhood? A. Yes, sir.

Q. Did you walk around very much while you were there?

A. No, sir, I staid in one place until the tipple was burned down and then I walked down to the tipple.

Q. The tipple at Number 4?

A. Yes, sir, and some of them objected to me going in there.

Q. Who objected? A. I don't know.

Q. Any "scab" men there when you got there?

A. No, sir, I never seen one of them at all."

Mr. McDonough: The remainder may be omitted.

Mr. Covington: We waive the cross examination.

2837 HOWARD H. REDNER, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Howard H. Redner.

Q. What is your profession? A. A Photographer.

Q. Will you speak so we can all hear you, and save a lot of time. Were you in the photograph business in Fort Smith until recently? A. I was.

Q. You are now doing some business for the government in cantonments? A. Yes, sir.

Q. You were in business in Fort Smith in 1913 and 1914?

A. Yes, sir.

Q. Did you, at the request of Bache & Denman, some time in 1913, take some pictures of their mining property down in the vicinity of Prairie Creek?

A. November 19, 1913.

Q. I show you some photographs, and ask that they be marked Plaintiffs Exhibits 62 to 68 inclusive, and I will ask you if Plaintiffs Exhibits 62 to 68 inclusive, are prints made from the negatives which you exposed on that date.

A. They are.

Mr. Hull: We offer in evidence Exhibits 62 to 68 inclusive.

Q. Referring to Plaintiffs Exhibit 67, I will ask you if you know what that mine is?

A. Mammoth Vein.

Q. Is that Mammoth Vein No. 6, do you know?

A. That is not No. 6.

2838 Q. If you know what it is—is it Mammoth Vein No. 1? A. I just heard it called Mammoth Vein.

Q. I think we will identify that more clearly in a moment. Referring to Plaintiffs Exhibit 66, will you state whether or not that is a picture of the Dallas Mine?

A. I have heard it spoken of as such.

Q. You have heard it called the Dallas Mine?

A. Yes, sir.

Q. Referring to Plaintiffs Exhibit 65, I will ask you—do you know of whom that picture is, that man standing in that picture? A. Mr. Denman.

Q. I will ask you if you know where that picture was taken?

A. This picture was made in what they call Mammoth Vein.

Q. Mammoth Vein No. 1?

A. I can't say about the number.

Q. That was taken underground? A. Yes, sir.

Q. By flashlight? A. Yes, sir.

Q. Referring to Plaintiffs Exhibit 64, I will ask if that is a picture of Mine No. 6? A. That is.

Q. Referring to Plaintiffs Exhibit 63, I will ask you if that is a picture of the Rock Island tipple at Mammoth Vein No. 1? A. It is.

Q. Referring to Plaintiffs Exhibit 62 I will ask you if that is a picture of Coronado mine? A. It is.

Q. Referring to Plaintiffs Exhibit 68 I will ask you if that is a picture of No. 4 Prairie Creek? A. Yes, sir.

Q. Mr. Redler, did you at my request have an enlargement made of these pictures? A. I did.

Q. I will ask if these six enlargements are here marked by the reporter Exhibits 69 to 75 inclusive,—referring to Plaintiffs Exhibit 69 to 75 inclusive, I will ask you
2839 what you did, Mr. Redler, in connection with having those enlargements made?

A. In what way do you mean?

Q. To get at this as directly as possible; didn't you send these negatives or positive prints of these pictures, as to which you have just testified, to Kansas City, and ask that enlargements be made? A. I did.

Q. And those are the enlargements that came back?

A. Yes, sir.

Q. And they are enlargements of the seven pictures that we have just introduced, the small print that has been introduced, with the exception of Mine No. 6? A. Yes, sir.

Mr. Hull: Now, we have the Kansas City photographer here in the court room that made those enlargements.

The Court: Offer them, and if they object, you can put him on.

Mr. Hull: We offer these enlargements.

Mr. Warrum: I don't suppose there is any question about this. The only objection we would make is that the originals are already in, and [it] our objection would be addressed solely to making the record too large, encumbering the record.

The Court: I suppose when you come to make the record, you can eliminate many things that are here now. I think perhaps the larger pictures would give a better view.

Mr. Hull: Mr. Redler, will you stand aside a moment, while I examine Mr. Lamb; I may want to recall you.

2840 RUFUS H. LAMB, called as a witness in behalf of the plaintiffs, and having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Rufus H. Lamb.

Q. You are a photographer here in Fort Smith?

A. Yes, sir.

Q. Were you a photographer here in 1914, in July?

A. Yes, sir.

Q. Do you remember the occasion of some mines being burned at Prairie Creek on the 17th of July, 1914?

A. Yes, sir.

Q. Did you, soon after that, in fact, on July 19th, go down and visit that scene of destruction? A. Yes, sir.

Q. I will ask that these pictures be marked by the reporter, and showing you first, Mr. Lamb, Plaintiffs Exhibits marked 76 to 91, inclusive, I will ask you if they are prints made by you from the negatives exposed by you at that time?

A. Yes, sir, they are, all.

Q. And they were made on what days, if you remember?

A. Well, No. 4 was made on the 19th, and No. 3 and No. 1 Mammoth Vein were made on the 20th.

Q. Of July 1914? A. Yes, sir.

Mr. Hull: We offer these exhibits, 76 to 91, inclusive.

The Court: What are they?

Mr. Hull: They are pictures.

The Court: The record doesn't show.

Q. I will ask you if these are pictures of the destroyed property of Prairie Creek made at that time? A. Yes, sir.

Q. And this shows the mines that were destroyed at that time?

2841 A. Yes, sir, as they were at that time.

Mr. Hull: I will simply state, at the suggestion of counsel, I will withdraw plaintiffs Exhibits 89, 80 and 79, which were duplicates used in making enlargements, which I anticipated would be necessary in my technical proof.

Q. Mr. Lamb, I will ask you simply if the notations on the back of these photographs are in your handwriting?

A. Yes, sir.

Q. And when did you place those inscriptions on the back of those pictures?

A. I don't remember, it was some time later, it must have been six or eight months after that.

Q. But you compared them with your negatives, and the inscription on the back of those negatives state the true—

A. (Interrupting.) They were copied off of the original negatives that I made.

Q. And those inscriptions state the true character of the picture in each instance?

A. Yes, sir, so far as I know at the time.

Q. And these pictures, referring to the exhibits named, with the exception of exhibits 79, 80 and 89, which are withdrawn, do these [picture] correctly represent the condition of the mines as inscribed on the back? A. Yes, sir.

Mr. Hull: I will ask that these pictures be marked by the reporter (handing the reporter a picture which was marked Exhibits 92 and 93.)

Q. I show you Plaintiffs Exhibits 93 and will ask you what that print is?

A. Why, that is a print from a copy, negative of a photograph furnished by someone else. Some other fellow
2842 had made them of this mine. I didn't make any photograph of this mine.

Q. You didn't make that negative, but you made that print?

A. I made the negative that this is printed from, and also this print, but I made the negative from another photograph which was furnished me at the studio.

Q. When did you make this, if you remember?

A. It was a short time after this had happened, say probably, well, I suppose it must have been within thirty days.

Q. You don't know who took this picture?

A. No, I don't know who made this picture.

Q. Who gave it to you? Who gave you the picture from which you made the negative, from which this picture was made? A. It was one of the Times-Record employees.

Q. Do you know who it was?

A. I believe Mr. Held, at that time.

Mr. Hull: I simply ask that this be marked for identification, so if we can prove who took it later on. Exhibit 93, and I had a duplicate of this marked Plaintiffs Exhibit 92, because it was used in making an enlargement, and I will now withdraw that.

Cross-Examination

By Mr. Covington:

Q. Were these photographs in your possession eight months after they were taken when you made the notation referred to on the back a moment ago?

A. I didn't quite understand you.

Q. Were those photographs, in your possession eight months after they were taken when you made the notation referred to on the back, a moment ago?

A. Yes, sir, I made those notations on the back there
2843 when I delivered them.

Q. And when did you deliver them and to whom?

A. I delivered them to Mr. Bache, I don't remember the date exactly.

Q. At whose instance did you make those pictures?

A. Well, I—how come me to make the pictures at No. 4, about a week before this had happened I planned an outing down there with some friends from Huntington, and after this happened I just concluded I would take a camera with me and I suggested we drive over by the mines, and I made No. 4 and we came back that afternoon, and I concluded Monday I would go down and make the other two mines, being I had already made the other, not knowing but what they would be of some value to me.

Q. And no one suggested that you make these pictures?

A. No, sir.

Q. You went down a day or two after each fire, and took a picture, did you?

A. Well, it was just about—the 19th was the day I went down, and it was about a week before that some friends from Huntington was up, and we planned an outing the next Sunday, and it was the Sunday after this happened that we were down.

Redirect Examination

By Mr. Hull:

Q. And it was about eight months later, after you took them that you gave them to Mr. Bache?

A. It was some time after.

Q. Some months? A. Yes, sir.

Q. I want to ask you one other question, Mr. Lamb. Did you go down to Prairie Creek and make pictures of the destroyed mines sometime in the spring of the present year, 1917?

2844 A. No, I was down, but however, I didn't make any pictures.

Q. You were there and went all over the ground?

A. Yes, sir.

Q. Can you state, referring to these pictures of the destroyed property, whether in the spring of 1917, the mines which have been destroyed, were in substantially the same condition as they were when these pictures were taken?

A. Well, I can as to what is known to me as No. 4; No. 1 Mammoth Vein and No. 3 Prairie Creek.

Q. What is your answer?

A. As to those three, the general view there was practically the same as it was when I was down before, except No. 4, they started rebuilding it.

Q. The Central Coal & Coke Company had started to rebuild?

A. Yes, sir, but the general view was practically the same.

(Witness excused.)

2845 HOWARD H. REDNER, recalled as a witness in behalf of plaintiffs, and having been previously sworn, testified further as follows:

Direct Examination

By Mr. Hull:

Q. I will ask that these enlargements be marked Plaintiffs Exhibits 94, 95, 96 and 97, and I will ask you if you had those enlargements made from certain of the pictures just introduced by Mr. Lamb? A. I did.

Q. You sent the prints to Kansas City and they were returned to you? A. Yes, sir.

Q. And these four exhibits are enlargements of the corresponding pictures on these small prints? A. They are.

Mr. Hull: We offer these four enlargements, Exhibits 94, 95, 96 and 97.

Q. Referring to Plaintiffs Exhibits marked 98, I will ask you if that was also an enlargement made under your direction, in the same way?

The Court: What exhibits, enlargements of what?

Mr. Hull: An enlargement of that has been marked for identification Plaintiffs Exhibit 93.

A. It is.

Mr. Hull: We simply ask that this be offered for identification at the present time, or marked for identification. You may cross-examine.

Cross-Examination

By Mr. Covington:

Q. Mr. Redner, when did you make these photographs, these exhibits which you have identified?

2846 A. Which ones?

Q. All of them, any of them.

A. At different times.

Q. When?

A. November 19, 1913; March 15, 1917; May 7, 1917; and June 27, 1917.

Q. You made the first photograph in March or November? A. November 19th, 1913.

Q. November 19, 1913? A. Yes, sir.

Q. Now, does that include the first exhibits presented to you, the ones you made in November 1913?

A. Yes, sir, those large eight by ten square pictures showing the mine property intact. That was made November 19, 1913.

Q. At whose instance did you make them?

A. Bace Denman Coal Company.

Q. Who, what party connected with the Bache-Denman Coal Company?

A. Mr. Bach and Mr. Denman.

Q. Mr. Bache and Denman? A. Yes, sir.

(Witness excused.)

Mr. Hull: In connection with this offer, I ask the privilege of marking these enlargements, just for the purpose of identification, the ones that are made from them, that are inscribed by Mr. Lamb, marking the same inscription on the enlargements and the ones enlarged from the eight by ten, simply to show what they are.

The Court: If you are going to have them in here everybody would like to know what they are.

Mr. Hull: I will do that tonight, and we won't show them to the jury until tomorrow.

2847 M. B. WILLSLEY, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. M. B. Willsley.

Q. Where do you live?

A. I live at Webb City, Missouri, is my home now.

Q. What is your business?

A. I am working for the Meedy Mining Company at Webb City.

Q. In the spring and summer of 1914, state what your position was and with what company?

A. I was mine foreman for the Coronado Coal Company, Bache and Denman.

Q. Bache and Denman property? A. Yes, sir.

Q. Will you state what equipment there was at the Coronado Mine?

A. Yes, sir, there was a hoisting engine, and five boilers, and slack washers, complete.

Q. What was the capacity of that slack washer?

A. I believe 500 tons, if I remember right, 550 tons, I believe it was.

Q. That means 500 tons a day? A. Yes, sir.

Q. Was there a boiler house there? Yes, sir.

Q. How large?

A. Well, that boiler house was about 45x60, I suppose. I never measured it, but something like that.

Q. How many boilers there? A. Five.

Q. What kind of boilers?

A. I couldn't tell you the make of the boilers.

Q. Were [the] horizontal boilers?

A. Yes, sir, they were horizontal boilers.

2848 Q. Were they all connected and fitted up for operation?

A. Yes, sir.

Q. Was there an engine house? A. Yes, sir.

Q. How large?

A. I believe it was 24x30, if I am not mistaken.

Q. And you said there was a hoisting engine?

A. Yes, sir.

Q. Do you remember the size of it?

A. 18x36 I think.

Q. Was there a supply house there? A. Yes, sir.

Q. What did that contain?

A. Supplies for the slack washer, and pumps, and the general repairs for all work we had there.

Q. State what machinery and equipment there was around in the supply house, and there in the mines.

A. In the supply house there was just repairs for new fittings, pipe fittings, and screen and slack washers, and piston rods, and valves, and such as that for pumps.

Q. Was there a fan in the fan house?

A. There was a fan in the fan house, it was above the air shaft.

Q. It was part of the Coronado equipment?

A. Yes, sir.

Q. That was [already] for operation? A. Yes, sir.

Q. Was there a friction clutch engine put there at the top? A. Yes, sir.

Q. Do you remember the date the Coronado burned?

A. Yes, sir.

Q. Do you remember what day that was?

A. The 20th of July, 1914.

Q. When did the Coronado stop operating?

A. The last day that Coronado run, I believe was on the 18th day of April.

2849 Q. Do you remember when it first stopped, just before that, do you remember that date?

A. Well, it run in the last four days run, it was on the 13th and 14th, and then off to the 17th, and run the 17th and 18th of April.

Q. And why did it shut down on the 18th?

A. On account of the trouble over at No. 4.

Q. And it did not operate again then until it was destroyed?

troyed? A. No, sir, it never operated again.

Q. Now, you say it was destroyed by fire on the 20th of July? A. Yes, sir.

Q. What day was that?

A. I can't tell you what day, of the week it was. It was on the 20th of July.

Q. That was three days after the battle over at Prairie Creek? A. Yes, sir.

Q. How far was Coronado from Prairie Creek No. 4?

A. I would judge about three miles.

Q. How far was Coronado from Huntington?

A. I believe they called it two and a half miles.

Q. State what you saw and heard in connection with the burning of Coronado.

A. When it burned—the day that it burned, I was there looking after the property, after it shut down, and I had been down at the mine all day, and had just been down at the depot to get a paper, and was up around the mine and just about 11:00, or half past 11:00; about half past 11:00, as near as I could judge, and then I went on up to the house for dinner. There was no one around the place that I could see, anyone, and dinner was not quite ready when I got up there, and I sat down in the house to read the paper.

2850 My house was facing, the dinning room faced the mine, and we had a porch screened in on the south side of the house to eat in in the summer time when it was warm, and my daughter went out to set the table, and she happened to look up and said that the tipple was afire, and me and my friend run down there, and got down close to the mine, and Lewis Smith, he lives down closer to the shaft than I did, and him and his son-in-law, Will Miller, I met them and I hollered to them, "The tipple is afire", and we run down. It was in the slack washer of the elevator, and where it was on fire, and we run around to it, and Mr. Miller, Mr. Smith and my son was with me, and I run around in there, and this elevator shaft was afire, and I looked into it and seen it was all ablaze.

2851 Q. Referring to plaintiffs' Exhibit 69, I will ask you to step over to this easel here, and is that the picture of it? A. Yes, sir.

Q. I will ask you to point out where the fire had started when you got there?

A. The fire started at the elevator shaft. The elevator was back up here, and right down here is the hopper. (The witness explained the photograph, but was so far from the reporter that it was impossible to hear.)

Q. I think we can all hear you better if you will go over to the witness stand. State what you found when you got there?

A. Right on the ground at this hopper or elevator where it was afire, there was a gallon can there, a cottolene can, and I picked that up, and there was about a half a teaspoonful of coal oil in the bucket, and on the elevator the oil had run down on the outside, and when I picked up the bucket Mr. Smith hollered at me and said, "Willsley, get out from under there, there might be dynamite in there". And I looked around and found the tracks of a man, and I run around to see if I could see anybody.

Q. Now, referring to those tracks, were they over here at the extreme lower right hand corner? A. Yes, sir.

Q. What does that dark spot indicate?

A. The refuse from the slack washer; that we washed out of the slack.

A. That is a soft discharge from the slack water?

A. Yes, sir.

Q. State what you saw here regarding tracks?

A. I saw a man's tracks where he had been running. He plowed up the dirt where he went over, and then we crossed four or five tracks; three that belonged to the shaft and then it drops off about 20 feet again into a little creek bot-
2852 tom, and when he got over the railroad, that is as far as we could see the tracks. There was some timber and corn fields over there, and I couldn't see, and then I ran back around the shaft, and seen that the fire was going, there was no water that I could get, and I seen that it was going to go, and I got to a telephone at the house as quick as I could and called up and told them that Coronado was afire.

Q. How many people had gathered by the time you got there?

A. I guess there must have been ten or twelve when I first went to the house.

Q. Was there any chance of putting out that fire when you got there, Mr. Willsley?

A. No, sir, all the way I could have got it out was to get water enough to put it in the elevator, but it acted just as a flue.

Q. The elevator acted as a chimney there?
A. Yes, sir, and it was covered on the outside with corrugated iron.
Q. Did you set fire to Coronado, Mr. Willsley?
A. Not likely that I would burn up my job.
Q. You had been foreman there how long?
A. I think I was there about five years.
Q. That was the only job you had, was it, Mr. Willsley?
A. I was out of it when that burned down.
Q. Do you remember someone coming to you soon after Coronado was burned, and saying something about an affidavit that somebody had been asked to sign? A. Yes, sir.
Q. State to the jury what that was?
A. Well, it was about a week or ten days, I guess it was, I don't remember, I was down at Burner station one day, and Mr. Lewis Smith came to me and said,—
2853 Q. (interrupting). I can't hear you.
A. About a week, or ten days after the fire, Lewis Smith that lived right by the mine and run with me that day, he said there was an affidavit made out that I burned Coronado, and I said, "Is that so?" And he said, "Yes", and I said, "Who made it", and he said, "Howard Shaw, Lee Anderson, Dock Jones and Tom McLain made the affidavit", and that is all I ever heard of it.
Q. Did he say anything about them having asked him to sign it? A. Yes, sir.
Q. State what they said in that connection.

Mr. Warrum: Who is Smith, there is so many of them I have forgotten them.

The Court: I don't know which one it is.

Q. Do you know where Lewis Smith worked?
A. At that time at No. 3 Central.
Q. That was a union mine?
A. Yes, sir, he had worked at Coronado before that.
Q. What did he say about them having tried to get him to sign that affidavit?
A. They told him they wanted him to go and he said no, he was not going to lose no time, that he didn't think I had done it, and they said he didn't need to lose no time, that they would pay his day's wages, and he refused to do it.
Q. Pay his wages and go where?
A. To a notary public over there somewhere.
Q. And he said he refused to sign it? A. Yes, sir.
Q. Do you know who did sign it?

A. Only what he told me.
Q. Who did he say had signed it?
A. Lee Anderson, Dock Jones, Howard Shaw and Tom McLain.
Q. Did you ever set fire to Coronado, or have anything to do with setting it on fire? A. No, sir, I did not.

2854 Mr. Hull: You may cross-examine.

Cross-Examination

By Mr. Covington:
Q. What time of day was it when the mine caught on fire?
A. It was right about half past eleven, as near as I could tell. I didn't look at my watch, but it was about half past eleven.
Q. You had been there all day, had you?
A. Yes, sir, only just a little while,—
Q. (interrupting). Anyone there but you?
A. No, sir, I didn't see no one around there at all.
Q. How far was your house from the mine?
A. My house was about 300 yards north.
Q. About 300 yards north?
A. Yes; and about 150 yards west of the shaft.
Q. Was there any trees or woodlands between your house and the shaft?
A. No, sir, it was in plain view of the shaft.
Q. Where did Mr. Smith live?
A. He lived north of the shaft about, I guess, 400 feet, but he lived a little east of north and I lived a little west of north of the shaft.
Q. It was open all around the shaft, was it?
A. It was around the side my house was on.
Q. Who else lived there near you?
A. That was all that lived there except some other people, —quite a number of miners lived north of me, not in the camp.
Q. Now, how long had you been away from the mine when you discovered the fire?
A. I had been away from there 20 or 25 minutes, I guess.
Q. 20 or 25 minutes? A. Yes, sir.
Q. About how long did the fire appear to have been burning when you returned there?
2855 A. It was just the coal oil burning mostly when I got there. The timbers was afire but the coal oil was making it burn more.
Q. You say there was a can of oil setting there?
A. Yes, a can of oil with some oil in it.
Q. And it had been setting there for days, hadn't it?

A. No, sir, it was not sitting there when I went to the house, because I went right past there.

Q. Wasn't there a can or a bucket of oil setting there for four or five days before this mine caught on fire? Sitting out near the tipple there?

A. It was not setting there an hour or a half an hour before the fire.

Q. And isn't it a fact that an old lady living near there called your attention to the fact, and you said it was all right?

A. The old lady said she seen the bucket sitting by the power house a couple of days before, and she wondered what it was, it being full of water.

Q. The same bucket?

A. She said it was the bucket, I don't know.

Q. How far was it from your house over to this Smith house? You say Mr. Smith and someone was standing in the yard when you discovered the fire and you hollered to them?

A. There was a cinder pile and a little oil house between Mr. Smith's house,—and some timber between Smith's house and the mine, and between Smith's house and the mine was no trees, and between Smith's house and the shaft no trees, and he lived a little east of the shaft in a little grove there and I lived west where the timber was cut out and I could see one side of the shaft.

Q. The tracks you saw leaving there went down to the corn and across the creek?

2856 A. Yes, and across the creek over towards No. 3 Central.

Q. How far was it from the shaft down to where it struck the woods,—went into the woods?

A. Well, he would have to cross a space for four tracks, four track railroad, and then I judge it was about 15 feet from there where the embankment went down 20 feet into a flat,—into this field.

Q. Did you guard the property? Had you been guarding the property?

A. I had been down there looking around to see if everything was all right.

Q. You just remained there in the day time? A. Yes.

Q. You did not stay there at night?

A. No, sir, I was down in the evening and kind of looked after it.

Q. The mine burned at 12:00 o'clock in the day time?

A. Yes.

Mr. Covington: That is all.

Redirect Examination

By Mr. Hull:

Q. How old are you, Mr. Willsley? A. 57.

Q. What is your family? A. Five children.

Q. Were they there living with you?

A. My oldest son was at Huntington at the time and he seen the fire and came up after it was pretty well burned out.

Q. How many children were living with you?

A. Three at that time.

Q. Your daughter and two sons? A. Yes, sir.

Mr. Hull: That is all.

Recross Examination

By Mr. Covington:

Q. I neglected to ask you one question, Mr. Willsley. You say a considerable number of farmers gathered in
2857 there about the time of the fire?

A. After I went up to the house and telephoned there was quite a number, In an hour there was a good crowd there.

Q. Did you say there was several when you left to go up to the house to phone? A. Yes, sir.

Q. And didn't those men ask you to let them put out the fire and they started to do it and you stopped them and said it didn't make a damned bit of difference, it was insured?

A. No, sir. When I came from the house I brought five buckets and I said, "I don't think we can save it, but let's try", and Howard Shaw brought out an oath and said, "Let it go to hell". Just as quick as I saw it was afire and saw we couldn't stop it, I went to see the tracks.

Q. Did you show the tracks there to the farmers?

A. Yes, sir. Smith saw them and Miller saw them and my son did.

Q. You put in your time trying to track the man instead of putting out the fire?

A. I could not have put out the fire then.

Witness excused.

2858 M. O. WILLSLEY, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your name. A. M. O. Willsley.

Q. You are the son of the man who has just testified?

A. Yes, sir.

Q. How old are you? A. 22.
Q. Were you working at Coronado with your father in July, 1914?
A. No, sir, I was not working then. I was working up to April.
Q. Were you living near Coronado at that time? A. Yes.
Q. Where do you live now?
A. At Webb City, Missouri.
Q. What are you doing there? A. Mining.
Q. Do you remember the day that Coronado burned?
A. Yes.
Q. Tell the jury in your own way just what happened in connection with that burning?
A. I had been up to the store playing cards with a bunch of fellows and about 12:00 o'clock I went home to dinner. My father had just got home a few minutes before and while we were waiting on dinner my sister hollered and said the tipple was on fire. We ran down to Mr. Smith's house and he and Will Miller were in the yard and they went over with us and got under the tipple where the slack track is.
Q. Look at this picture here and state which car you mean?
A. It was the left hand car.
Q. That is, the one farthest from the right hand side?
2859 A. Yes. There was a gallon bucket setting there with a little coal oil in it and the coal oil was all over the slack hopper under the elevator.
Q. How far was the fire up in the frame work here (indicating on picture) when you got there?
A. I judge it was about up to that platform (indicating).
Q. This platform here (indicating)?
A. Yes, or a little above that.
Q. This is the elevator and that was just above the fire?
A. Yes.
Q. And that acted as a chimney for the fire?
A. Yes, it was open at the top and made a flue.
Q. Was there any chance of putting out that fire when you got there? A. Not without water and we didn't have it.
Q. State what you saw in connection with some tracks going over the washer pile?
A. We saw tracks going in that direction and we all four went out and saw where the man had been running over the refuse pile.
Q. How could you tell he was running?
A. By the way he would slide on the soft dirt we took it for granted he had been running.

Q. Who was there at the time you came there with your father?

A. I and my father and Mr. Smith and Will Miller went together. We were the only ones there at the time.

Q. How soon did some others get up there?

A. Inside of 15 minutes there were a few and inside of 30 or 40 minutes there was a hundred or more.

Mr. Hull: That is all.

The Court: What was the date of this?

Mr. Hull: July 20th.

2860 Mr. Covington: No questions.

Witness excused.

The Court: At this point we will adjourn until tomorrow, Wednesday, November 7th, 1917, at nine-thirty o'clock a. m.

2861 Fort Smith, Arkansas.

Wednesday, Nov. 7, 1917, 9:30, a. m.

Pursuant to adjournment as last aforesaid, came all of the parties as before on Wednesday, November 7th, 1917, and the trial of the case proceeded as follows:

Mr. Hull: If the court please, I will ask the reporter to mark this plaintiffs' Exhibit No. 99, and we offer it in evidence, it being the stub of a check produced by the defendants.

"No. 726.

"June 30th, 1914. Order of Hayden Sporting Goods Company.

"Strikers Tents and Supplies. $411.99."

The Court: What is that?

Mr. Hull: The stub of the check introduced by plaintiffs' yesterday.

2862 Amos Sullivan Johnson, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. Amos Sullivan Johnson.

Q. Where do you live now, Mr. Johnson?

A. At Midland.
Q. What is your business?
A. My present business,—I am in the coal business a little, a pigeon hole coal business.
Q. Do you remember being in Huntington on the 20th day of July 1914? A. Yes, sir.
Q. Do you remember that day as being the day the Coronado mine burned? A. Yes.
Q. State with whom you were and at what time and what you did on that day?
A. I was with Mr. J. E. Finney. About eleven o'clock, somewhere I judge between eleven and twelve we had gone to Marshal Hayes cafe for lunch. I lived at Poteau at that time. We had been to Huntington to bury my father-in-law on Sunday, the day before. I thought we would go to the cafe for lunch and get an early start for home and after we got through lunch we went out on the porch and we seen the flames going up and the people coming out all along the street and they said it was Coronado burning up. The flames seemed to be several hundred feet high.
Q. From Marshal Hayes cafe, where did you go then?
A. We got in a car and started for home by the way of Mansfield, to go to Poteau.
Q. You passed near Coronado, did you, going home?
A. Yes.
2863 Q. Did you stop, or were you stopped by a crowd of men?
A. We got somewhere about the bridge,—I am not sure whether we crossed the bridge or not. It was just as we were going out of Huntington.
Q. What occurred at the bridge?
A. We met a crowd of men there and we stopped and asked them what was the matter, so many were going and coming, and they said Coronado was burning up. I asked what was the matter and they said they understood about four hundred scabs were shipped in there the night before and they were burning up the town.

Mr. Warrum: The defendants separately move to strike out the last answer of the witness because there is no identification of the crowd.

The Court: The objection is sustained.

Mr. Hull: If the court please, it seems to me this is a part of the res gestae as to the burning of Coronado. It is the same thing identically as happened in Hartford, Midland and Huntington on the 17th; that a rumor gets about that

scabs are coming and going to do something and then something happens to our property and it seems to me this is very important and is just as much identified as the rumors in Hartford and Huntington that the scabs were coming and they burned up the place.

The Court: The trouble is, this is not connected with the property destroyed, is it? This is not the property that is alleged to have been destroyed.

Mr. Hull: Yes, this was three days after the battle.

The Court: I was under a misapprehension of it then. The objection will be overruled. Wasn't there another destruction in October?

2864 Mr. Hull: Yes, but we do not claim damages for that.

The Court: You have been putting in testimony about that.

Mr. Hull: This is in connection with Mr. Willsley's testimony yesterday.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Had you been in Huntington the night before?
A. Yes.
Q. Did you know of anything being done in Huntington with relation to guarding Huntington against these scabs?
A. It is my understanding guards were out guarding Huntington.
Q. Against what?
A. Against destruction that might occur.
Q. By whom? A. This same rumor that came out.
Q. About the scabs?
A. Yes, that was really the understanding, that they were afraid of destruction from the non-union men, the scabs as they called them.
Q. What had you heard about the 400 scabs?
A. It was probably mentioned in response to my inquiry as to what was the cause of the fire, that was relation in that connection. I am not positive exactly the words about it.
Q. State as near as possible what time it was you stopped where this crowd of men was and they told you this?
A. Somewhere near twelve o'clock.
Q. Did you go by Coronado? A. No.
Q. You turned and went to Poteau another way, did you?
A. Yes, sir.

Mr. Hull: You may cross-examine.

Mr. Covington: No cross-examination.

Witness excused.

2865 J. E. FINNEY, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name? A. J. E. Finney.

Q. What is your business, Mr. Finney.

A. Coal business.

Q. You are a coal operator? A. Yes.

Q. How long have you been in that business?

A. About 18 years.

Q. Where do you live now? A. At Poteau, Oklahoma.

Q. Do you remember on the 20th day of July, 1914, of being in Huntington? A. Yes.

Q. State what occurred in connection [—] your leaving Huntington with Mr. Johnson, the last witness who was on the stand?

A. We left Huntington about twelve o'clock, it might have been a little later, and as we went out of,—nearly out of the town, quite a number of men were going west.

Q. What direction was that?

A. West was nearly toward Coronado. Coronado is perhaps a little north of west.

Q. Was it the road leading to Coronado?

A. Yes, the road leading to Coronado. And we made some inquiry with respect to what was going on, and it was generally understood,—I believe it was put that "Coronado was going up."

Q. Had you been in Huntington the night before?

A. Yes.

Q. Do you know anything about the town being guarded that night? A. No, sir, I don't really know that it was.

Q. Did you hear anything about that circumstance there that night or the following morning? A. Yes.

2866 Q. Did you hear it discussed why the town was guarded? A. No, I don't think I did.

Q. Did you hear anything about scabs having been shipped to Coronado there the day before or a few days before?

A. No.

Q. You did not hear that? A. No.

Q. Did you go by Coronado? A. No.

Q. You turned around and went to Poteau another way, did you? A. Yes, by way of Mansfield.

Q. Was that because of what you heard at the bridge?

A. I think it was because Mr. Johnson was with me and he insisted that we go the other way.

Mr. Hull: That is all.

Cross-Examination

By Mr. Warrum:

Q. In these rumors that you heard, were these rumors about the people over at Prairie Creek, the guards and armed non-union men at Prairie Creek shooting up Frogtown or any other town in that neighborhood?

A. The rumors, as I understood them, were to the effect that these non-union men were likely to make a raid on Huntington.

Q. In the rumors or talk you have testified about, was there reference to what they had already done with reference to shooting up Frogtown? A. No.

Q. Was there said in connection with these rumors you have testified about indicating what they had done previously? These guards and non-union men?

A. No, I do not think so.

Mr. Warrum: That is all.

Witness excused.

2867 FRANK PIGG, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. State your full name. A. Frank Pigg.

Q. What is your occupation?

A. Conductor on the Midland Valley.

Q. Were you conductor on the Midland Valley in 1914?

A. Yes.

Q. In July? A. Yes.

Q. Was it your business to switch cars in and out of Mine No. 4 at Prairie Creek? A. Yes, sir.

Q. Do you remember the day of the big battle down there July 17th, 1914? A. Yes, sir.

Q. Did you go there during the afternoon of that day and find cars burning at No. 4?

A. Yes, sir, I guess I went in the mine somewhere about three o'clock.

Q. Had you received any orders from your company that morning to go in and switch a car out? A. No, sir.

Q. How did you happen to go down there?

A. It was on a run we always made down there,—we always had a run down there and we worked that branch in the afternoon.

Q. What did you find when you got there that afternoon?

A. The tipple was burning.

Q. With relation to burning cars, what did you see?

A. The tipple was practically all fell in when we got there and the cars, I believe there were nine or ten cars destroyed at No. 4 Prairie Creek, and there was two or three destroyed at Mammoth Vein No. 1. We always called it the Denman Mine.

2868 Q. Speaking of No. 4, where were the burning cars?

A. There was one car standing right on the scales, that was a loaded car that was burned, and there was a loaded car burned on the team track to the left of the scales, and a loaded car burned just above the scales between the scales and the tipple. And the other cars was empty.

Q. How many loaded cars were burned?

A. Three loaded cars.

Q. Now, with reference to this loaded car burned on the scales what [was] condition was that in when you arrived?

A. It was practically all burned up, it was ready to fall down on the truck.

Q. Was it possible for you to take the number of that car? A. Yes, sir.

Q. Was it possible or impossible?

A. It was impossible for me to get it because the numbers was all destroyed. You could not tell about it.

Q. The number had been burned off of the car when you got there? A. Yes.

Q. Will you state the custom with reference to taking out cars, when they were loaded and weighed, where would they be placed?

A. Either on the scales or just below the scales, they weighed them at the scales and they would always drop them off of the scales.

Q. There was an incline from the tipple to the scales?

A. Yes. The way the track was they had to go around on the right hand, on the scale track, and shove the empties up the incline to drop down to the tipple. And after they were loaded they dropped down from the tipple to the scales, and then down to where we could get hold of them.

Q. There was another incline down to drop them off
2869 of the scales? A. Yes.

Q. And what was so arranged that it could be done without power? A. Yes.

Q. State whether or not there was any loaded coal car there burning or not burning, when you got there?

A. No, sir, there was a clear track from the scales to the main line.

Q. So the car on the scales that was burning was the first loaded car? A. Yes.

Q. And would have been the first one taken out by you?

A. Yes.

Q. Had you taken out any car on the 16th of July, the day before?

A. I had taken out a couple of cars a day or so before that, it must been about the 14th.

Q. After that time, you had not taken out any cars?

A. No, sir.

Q. State whether or not any car, after it was weighed, was ever shoved back up the incline toward the tipple?

A. No.

Q. When you took it, it was always on the scale or below the scales? A. Yes, sir.

Mr. Hull: You may cross-examine.

Mr. Covington: No cross-examination.

Witness excused.

Mr. Hull: I now show to the jury plaintiffs' Exhibit No. 75, which is a picture of Prairie Creek No. 4 in November, 1913. (Exhibits same to the jury.)

I now show the jury plaintiffs' Exhibit No. 97, which is Prairie Creek No. 4, the same mine on July 19th, 1914,

2870 (Exhibits same to the jury.)

I now show the jury plaintiffs' Exhibit No. 91, which is Prairie Creek No. 4, the same mine, on July 19th, 1914.

(Exhibits same to the jury.)

I now show the jury plaintiffs' Exhibit No. 90, which is Prairie Creek No. 4, the shaft, the mouth of the shaft, on the 19th of July, 1914.

(Exhibits same to the jury.)

I now show the jury plaintiffs' Exhibit No. 89, which is Prairie Creek No. 4 tipple on July 19th, 1914.

(Exhibits same to the jury.)

I now show the jury plaintiffs' Exhibit No. 95, which is Prairie Creek No. 3, on July 20th, 1914.

(Exhibits same to the jury.)

I now show the jury plaintiffs' Exhibit No. 94, which is Prairie Creek No. 3 slope on the same day, July 20th, 1914.

(Exhibits same to the jury.)

2871 HEBER DENMAN, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is Heber Denman? A. Yes, sir.

Q. What is your business, Mr. Denman?

A. Mining engineer and superintendent of coal mines,

Q. Where are you located now?

A. At Clarksville, Arkansas.

Q. With what company?

A. With the Fernwood Mining Company.

Q. Are you the Mr. Denman who was and is interested in these companies as a stockholder and officer? A. I am.

Q. Where did you get your mining training, Mr. Denman?

A. In Pennsylvania, Indian Territory, West Virginia and Arkansas.

Q. As mining engineer? A. Yes.

Q. You graduated where, Mr. Denman?

A. At Lehigh University.

Q. In what year? A. In 1892.

Q. Now, state generally what was your experience in connection with your profession between your graduation at Lehigh University in 1892 and 1899 when you came out to this country?

A. I worked for the Berwind-White Coal Mining Company in Pennsylvania.

Q. What position did you hold there?

A. I had charge of keeping up the surveys and construction of plants, and opening of mines.

Q. Above and below the ground, both?

A. The entire construction of mines, both above and

2872 below ground.

Q. Did you go there right away after graduation?

A. Yes.
Q. And stayed there until you came out here?
A. I stayed there until I went to Indian Territory.
Q. When was that? A. October, 1908.
Q. With Mr. Bache? A. Yes.
Q. Then state, without going into detail, in a general way, what was your experience in connection with your profession when you first came to this country,—to this part of the country?
A. You mean Arkansas or Indian Territory?
Q. First Indian Territory and then Arkansas?
A. When I went in Indian Territory with Mr. Bache we leased two mines from the old Choctaw, Oklahoma & Gulf Railroad, and while there we opened up a number of shaft and a great number of mines, both for ourselves and the railroad company.
Q. When was the first time you came to Arkansas?
A. In the spring of 1903.
Q. How did you happen to come here?
A. Well, because the Rock Island Railroad bought out the Choctaw Railroad and bought out our contracts we had with the Chocaw, Oklahoma & Gulf Railroad Company.
Q. What did you do in connection with the development of properties in Arkansas when you first got here?
A. Well, the first thing we did, we bought the Missouri & Arkansas mines. Well, at that time we had individually bought the lands of the Hartford Coal Company; we owned those individually; and after we came we bought the Missouri & Arkansas, and at different times we acquired,—we sank some shafts and opened up some mines of our own and leased two properties from the Midland Valley Rail-
2873 road.
Q. Direct from the Midland Valley?
A. No, we leased from the Cherokee Construction Company.
Q. That was a subsidiary of the Midland Valley? That is, did they control it? A. They controlled it.
Q. Did you from time to time acquire these properties that belonged to the companies, the plaintiffs in this case?
A. We did.
Q. Now, in what capacity did you act in connection with these companies prior to 1914?
A. I acted as engineer and superintendent.
Q. Were you down there at the mines?
A. Yes, I lived at Midland most of the time.
Q. You had superintendence of the construction of these various shafts, slopes, tipples, etc., yourself?

A. Yes, sir, I did.
Q. All of them? A. Yes.
Q. And were you familiar personally with the above and under ground operations of all these companies?
A. I was, and am.
Q. Now, when did you cease the active operation of these mines in Sebastian County?
A. I left here in December, 1913, the last of December.
Q. Where did you go from there?
A. I went to Pennsylvania.
Q. Did you come back here before July 17th, 1914?
A. Yes, I came back here in the last part of June.
Q. How long were you here? A. About ten days.
Q. Where did you go when you were here in those 10 days?
A. I went down to Prairie Creek.
Q. And stayed there all that time? I stayed around there. I didn't stay there all the time. I stayed around there.
2874 Q. Did you at that time examine these mines and properties and go all over them?
A. I visited them, yes.
Q. You visited each one of them during that ten days, did you?
A. Yes.
Q. Mr. Denman, I hand you plaintiffs' Exhibit No. 65 and ask you,—

The Court (interrupting): The same being what?

Q (continuing). The same being a picture of the inside of a mine, with Mr. Denman in it, and I will ask you, Mr. Denman, what that is?
A. That is a picture in a room inside of Mammoth Vein No. 1.
Q. Is that you there? Yes.
Q. I hand you plaintiffs' Exhibit No. 67 and ask you what property that is there?
A. That is Mammoth Vein Mine No. 1.
Q. Was the property shown by that picture in substantially the same condition when you visited it in June, 1914, as shown in that picture? A. Yes.
Q. I hand you plaintiffs' Exhibit No. 64 and ask you what that is?
A. That is Mine No. 6, Mammoth Vein No. 6.
Q. Was that property as shown by that picture in substantially the condition as shown by the picture when you visited it in June, 1914? A. Yes.

Q. I hand you Plaintiffs' Exhibit 63, and will ask you
2875 what that is.

A. That is the Rock Island tipple of the Mammoth Vein Mine No. 1. There were two tipples, and this is the one that was located on the Rock Island Railroad.

Q. Was that property, as shown by that picture, in substantially the condition as there shown when you visited it in June 1914?

A. Yes, sir.

Q. I hand you Plaintiffs Exhibit 66, and ask you what that is.

A. That is the Hartford Coal Company mine, known as the Dallas Mine.

Q. Was that property in substantially the condition as shown by the picture when you visited it in June 1914?

A. Yes, sir.

Q. I hand you Plaintiffs Exhibit 68, and ask you what that is.

A. That is the tipple and plant at Prairie Creek No. 4.

Q. Was that property in substantially the same condition as shown by the picture when you visited it in June 1914?

A. Yes, sir.

Q. And I hand you finally Plaintiffs Exhibit 62, and will ask you what that is.

A. That is the tipple and washery of the Coronado Coal Company.

Q. Was that property in substantially the condition as shown by the picture when you visited it in June 1914?

A. Yes, sir.

Q. Now, Mr. Denman, did you visit those properties after their destruction? A. Yes, sir.

Q. I want—will you, taking the properties one at a time, I want you to state what the properties consisted of, prior to their destruction, together with the amount of damage that you found on visiting them subsequently had been done to them, beginning with Prairie Creek Mines Nos. 3 and 4,
2876 and in testifying you can refresh your memory from your memoranda. Give a general description of the property now and development in the Prairie Creek 3 and 4, the property shown by the pictures that you have identified.

A. The properties 3 and 4, the land consisted of 687 acres, most of which was underlaid with a vein of coal about seven feet in thickness, and on this property there was one shaft sunk 265 feet, with a plane, driven to the surface, known as Goo Goo plane. And, there was No. 3 slope, which at the time of the destruction was driven down to the main west entry, connecting with No. 4 shaft. At No. 4 shaft there was a large

tipple built of creosoted lumber, which had been built in the year 1913. It was equipped with shaker screens, and weigh pans and pumps and sheaves, and all the [paraphenalia] that goes with screening plant, and a rock dump, and a plant for dumping rock and coal; a boiler plant consisting of three large boilers with a force draft system, and feed water pump, and water system pumps, and a larger boiler house constructed of wood, frame, covered with galvanized sheet iron. There was an engine house constructed of wood covered partially with galvanized iron, and there was a shop with machinery and tools that usually go in a coal mine. There was the office and railroad track scales, and a great deal of piping, water and steam piping, and different pumps and water tank, and one large supply house, and another house adjoining it, and up at the head of Goo Goo plane, in the engine house, there was a large first motion hoisting engine with foundation and piping and fittings, and signal bells, signal system, and a rock hoist engine with ropes. The ropes that were with the hoisting engine, and a great many mine cars.

Q. How many?

2877 A. Well, altogether in the mine and outside together, there was over 200, then there was a big steam line, going up to the top of Goo Goo plane, a five inch stream line covered—

Q. (Interrupting.) How long?

A. About 1200 feet, and up that Goo Goo Plane there was a large motion hoisting engine, a large engine with an engine house, covering of it, with galvanized iron, and at the head of the plane was a 16-foot fan, with an air shaft, and fan house and fan engine, and a motor to operate it. And, then there was something over thirty residences, houses. Then, at Mine No. 3,—there was a slope and a tipple, and there was a large boiler house, containing two boilers, and an engine house containing a large hoisting engine and a rope, and there was numerous sheave wheels, and steam piping and water piping and water piping and pumps and a water supply system to all these mines, so we could get water from the creek. We had a pumping station on the creek, where we distributed water to all the mines there, and then we had stables; a large stable, large enough to handle forty or fifty mules, and a lock, and feeding troughs and so forth. In a general way, that covers the system there.

Q. Was there a blower system?

A. I mentioned that in the boiler house.

Q. How was the tipple equipped with reference to loading the cars?

A. It was a four track tipple. It had four tracks, and was a very well equipped tipple. It had a very large shaking screen, and was equipped to make four different sizes of coal, and it was a modern tipple in all respects, practically new. It had been rebuilt in 1913.

2878 Q. Was there a car loader connected with it?

A. Yes, sir, there was a box car loader, but at that time the box car loader was not in operation, but it was setting there.

Q. What is it?

A. A means of loading coal in box cars, instead of doing it by hand.

Q. How long was the slope at No. 3?

A. The slope at No. 3 was about 1600 feet.

Q. Now, the pumping system that you mentioned, what capacity was that?

A. Well, it was plenty large to supply all the mines with water. We had a four inch pipe laid a part of the way and three inch pipe, and distributed to some of the mines with two inch pipe, and the pumping station, and boiler on the creek, and tanks and pumps at No. 4 shaft.

Q. How many gallons a minute would it pump?

A. The pump was good for about 200 gallons a minute.

Q. Did you have mining machine?

A. Inside there was a Sullivan Mining Machine.

Q. Operated by what power?

A. By electric power, and then we had an electric pump, and a considerable amount of electrical machinery that I have not mentioned.

Q. Just briefly describe the electric machinery that was there.

A. Well, we had, I think, three electric motors, one 25-horse, and two 7½ horse power electric motors, and we had transformers, and then we had all the different electrical wiring and switches that go around. I cannot go into detail, there are so many different pieces to electrical equipment, and all the wiring down the shaft, and cables, and all that part of it.

2879 Q. Now, I show you Plaintiffs Exhibit 75, and will ask you whether that is the picture of the outside workings that you have described at Prairie Creek No. 4.

A. It is, yes, sir.

Q. And as it stood, when you saw it, in June 1914.

A. Yes, sir.

Q. Is there a picture here of anything connected with No. 3?

A. I think there is.

Q. Pick it out—show now the picture of the No. 3 outside that you have described.

A. There is none in that list.

Q. Were there any of the other properties that you have described in those pictures?

A. No, I described No. 3 and 4, and I don't see the picture of No. 3 tipple and plant.

Q. Now, describe the underground working and the development in No. 3 and 4, as they were.

A. The mine had been developed up to a capacity so it could produce 1000 tons a day. When we took hold of that plant, it had a development of, No. 3 and 4 together, had a development together for 44 working rooms. A room is where most of the coal comes from. And, before the destruction of the property, the two mines, which were operated as one, had development for 181 rooms. That is, it increased from 44 to 181 rooms, and we had a sufficient development to produce 1000 tons a day.

Q. Well, at the time immediately prior to—

The Court (interrupting): 1000 tons a day where?

Mr. Drinker: All of that mine.

The Court: You are speaking of No. 3 and 4?

2880 The Witness Yes, sir.

The Court: Not the whole mines.

A. No, just one plant.

Q. (By Mr. Drinker.) Now, when you say you had development enough to use 181 rooms, describe to the court and jury a little more in detail what that means; how the number of rooms measure the development, and how the development had proceeded up to that time, in connection with the question as to whether you had in your production previous to that time, got the development in your output?

A. What I mean by rooms is, in order to make places for men to work, you drive what is known as narrow work, and they are called entries, slopes and entries. Then after,—you have to pay yardage. Now, you pay men that work in the entries and air courses, and all narrow work, you pay them so much a ton and then you pay them additional yardage a considerable yardage price for driving. We had driven enough entries, which is to us a big loss in driving entries and slopes and things like that, we had driven enough to increase the capacity of our mines to turn 181 rooms; the rooms were turned and we had places to turn 181 rooms. Now in rooms

there is no yardage paid, in rooms we just pay for the coal, in rooms, especially in that high coal.

Q. Then, just driving the entry and narrow work is preliminary and necessary before you begin to get the coal in paying quantities. A. Yes, sir.

Q. And it is part of the construction of a mine preliminary to operating it on a commercial basis?

A. Yes, sir.

Q. Now in connection with that development work,
2881 approximately how much entry work of that kind had been driven?

A. Well, we had driven the main west entry a long distance; we had driven No. 3 slope down to make a connection, and had extended all entries a long distance. I cannot say offhand just how much.

Q. Can you, by refreshing your memory from your memorandum? A. I can.

Q. Don't read anything, but you can refresh your memory from that and then state from your own knowledge the extent of development.

Mr. Warrum: May we ask what he is refreshing his memory from?

(By Mr. Drinker.) Did you make up that memorandum?

A. I did.

Q. For the purpose of testifying here? A. Yes, sir.

Q. It consists of the details of development of the property and so forth in those mines? A. It does.

Q. Together with your own notes? A. Yes, sir.

Q. Now go on.

Q. (By the Court.) You know it is correct?

A. Yes, sir.

Q. And can you refreshing you recollection, state the facts as they are here set forth, as being the truth?

A. I can.

The Court: The Witness may use the memorandum for the purpose of refreshing his recollection.

Q. (By Mr. Drinker: Now, state the extent of that development. You need not add it up, if you want to give each item, give it that way.

A. In speaking of the development, this memorandum
2882 does not include all of the development that we had, but only includes that that was driven in advance of where the rooms were worked out.

Q. That is what I want to know.

A. We had in advance of where rooms were worked out, we had driven about 150 yards of slope, and we had driven about 8000 feet or between eight and ten thousand feet of entry and air courses, and between two and three thousand feet of cross cuts; entry cross cuts.

Q. Between eight and ten thousand feet of entry, and another eight or ten thousand feet of air courses?

A. Yes, sir.

Q. That is the entry goes independent of the air course, to keep the mine ventilated?

A. The air course goes parallel with the entry.

Q. But is shut off by pillar of rock or coal?

A. Yes, sir.

Q. And that is blocked up from time to time, as circulation extends?

A. The entry advances, these air courses are shut up so as to cause the air to travel to the face, instead of short circuiting.

Q. That air is kept in motion by a fan?

A. The air, the whole mine is ventilated by a large fan; this was ventilated by a 16-foot fan.

Q. The fan pulls the air out, and it has to go in the other end?

A. Yes, sir, we have an entrance and exit.

Q. Now how long was the entry connecting No. 3 slope with No. 4 shaft?

A. Well, it was about 2000 feet?

Q. How large was the shaft?

A. You mean the vertical shaft, going down through
2883 the rock? A. Yes.

A. The shaft was about eight by sixteen.

Q. And what size tracks were there in it?

A. The tracks were three foot gauge, laid on the plane, 25 pound steel; that is 25 pounds to the yard, and 16-pound steel to the yard in the entries.

Q. How many compartments? A. Three.

Q. And was there an air way in the shaft?

A. No, there was a two-hole way, pipe way, and all of the air went down the shaft, for the slope to the air shaft.

Q. The air went down No. 4 shaft and would come up No. 3 slope?

A. Not No. 3 slope, but Goo Goo plane they called it.

Q. Goo Goo plane was another independent opening?

A. Yes, sir.

Q. There was three openings, the shaft and No. 3 slope and Goo Goo plane. A. Yes, sir.

Q. How big was the Goo Goo plane slope?
A. It was driven about eight by ten feet wide, and I guess it averaged ten feet wide, and the height of the coal, about seven feet.
Q. And how big was the slope? A. The same size.
Q. Now what kind of haulage did you use in this mine?
A. For hoisting we used steam; there is a first motion hoisting engine, and in Goo Goo and No. 3 planes we used steam engines with wire and rope, and in the entries, which were practically level, we used mules.
Q. Now, No. 4 operated as one mine?
A. Yes, sir, the coal all went up No. 4 shaft.
Q. Now, have you described all the properties and fittings in connection with 3 and 4, or is there anything else?
2884 A. I have not described all the fittings, because it would take a book to put in all of the details. I have described all of the items, but when it goes into little details of an engine house or boiler house, I Couldn't begin to describe all of the details, but I have mentioned all of the main items.
Q. In addition to those items that you have mentioned, did that mine have, incident to it, and there at the time you visited it before the destruction, all of the incidental [paraphenalia] necessary and useful in the operation of a mine of that size, and of that capacity?
A. It was a completely equipped mine in all respects.
Q. And in what condition was that mine at that time?
A. In first class in every way, and had ventilation and haulage and pumping and development, and the machinery outside there, there was a large tipple, it was built for a very large capacity, all new. The entire equipment of the mine was first class, and in first class condition.
Q. And in working condition and in actual operation?
A. Previous to that time, yes, sir.
Q. When it shut down in April, it was in working condition—you don't know that, but when you saw it in December, it was in actual working condition?
A. Yes, sir, when I left here in December it was in actual operation.
Q. And when you saw it in June, was it capable of operating as efficiently as when you saw it in December, if it had a force to operate it?
A. No, the plant and equipment and everything else was in just as good condition as when I left here in December, but there was water in the shaft at that time; they were working the water with big buckets at that time.

2885 Q. Now, describe that operation, and describe what had happened to the mine previous to your coming back in June, but don't state what caused it, but describe what condition it was in, in connection with that water.

A. The water filled up in the shaft, drowned out the shaft, and they had it in big buckets and the hoisting engine was hoisting those big buckets of water.

Q. There were springs and things down in the mine that make water all the time unless you [pumpt] them out?

A. Yes, sir, you have to keep the mine pumped out all the time.

Q. How much water did that mine have to have pumped out of it in the operation, to keep it dry?

A. In the bottom of the shaft, we had one large pump, that had a rated capacity of 500 gallons a minute, and we had another smaller pump that was a big lead iron pump, and another smaller pump, that was good for 200 gallons, and we didn't run those pumps at the same time, and it was not necessary to run 24 hours a day. We run from 10 to 16 hours, according to the season of the year, whether it was wet or dry.

Q. The pump that you described awhile ago, as a 200 gallon capacity, that was not to pump the water out of the mine?

A. No, the one I spoke of was the water feed pump.

Q. That was up on top?

A. Yes, sir, back of the boiler house.

Q. Now, when the engines that were pumping the water up from the mine stopped, the water would fill up there above the pumps, would it?

A. Yes, sir, drown out the mine, and cover the pumps and you couldn't get to them.

Q. And what did you have to do to get the water out
2886 after that?

A. Put water boxes on hoisting ropes and hoist the water.

Q. Until you got—

A. (Interrupting.) Until we got the water out, to get to the pumps.

Q. When you were there on the night of June 14th, was the water all out, or almost all out?

A. It was gettting down very low there, it looked—my recollection is that it looked like about a week or ten days then would have the water all out.

Q. Now, I want you to describe this No. 3 and No. 4 property that you have mentioned, as you find it, when you

went back after the trouble, and state what was the condition of the property?

A. Well, at No. 3, everything was burned down, and the slope was caved in, and it was on fire. There was a fire in there, the smoke was coming out of the slope. At the top of Goo Goo Plane, the fan had been burned down, and the machinery at the top destroyed. That was around the fan. The fan engine and motor and all that part was destroyed Down at the shaft,—and all the piping, and all the fittings connected with it, were also destroyed or ruined. And down at the shaft practically everything had been burned. The water tank was still standing, that is the only hing that was remaining.

Q. Now, did you describe No. 4 yet?

A. I said everything was burned.

Q. At No. 4? A. Yes, sir.

Q. Was it possible to get into the shaft and slopes at Goo Goo plane, to go down and see what was underneath?

A. You couldn't get down the shaft, because the water was way up in the shaft, and you couldn't get into No.
2887 3, because it was caved in, and there was fire in there, and up on Goo Goo Plane, you could get down aways, but there was so much black damp, that you couldn't get down very far.

Q. What is black damp?

A. It is the gas that comes from combustion of coal, and things of that kind, and it comes at times without any combustion. It is a heavy gas that will put out lights, and if you get a large enough quantity of it will kill anyone.

Q. Now, what did you find when you went back that had any considerable salvage value?

A. The Goo Goo hoisting engine and engine house was still there, and the boilers themselves were there, and the box car loader had not been damaged very much and the wooden tank, wooden water tank, that was there; and a large part of the pipe, the large steam line, going from the boiler house to the Goo Goo Plane engines, that was right. That covers the bulk of it. Everything was junk, or destroyed machinery.

Q. Now, taking a property of this kind, is there any current market for property of this kind?

A. Well,—

Q. (Interrupting.) That is, as a going concern.

A. There had been no sales previous in that district. In the first place, practically all of the large properties were held by the big companies, and all the land had been taken up, and there had been no sale of property at all.

Q. And that necessarily applies to the other properties down there?

A. Oh, yes, that applies to them all.

Q. Now, state what, from your knowledge of these properties, and your knowledge of the coal business, and basing it on all of the imformation that you have in connection with such matters state what in your opinion is the reason-
2888 able value of that Prairie Creek property No. 3 and 4, which you described, before its destruction and after its destruction?

Mr. Warrum: The defendants separately object, unless the question is confined to the property owned by the Prairie Creek Mining Company, or some other plaintiff in this suit.

The Court: I think that objection would be good, if he were simply testifying as an owner of property, but he has laid the foundation here to testify as an expert.

Mr. Drinker: We are going to show—

The Court (interrupting): Of course, an owner can testify without any foundation as to the value of property. I think that will be conceded is the law.

Mr. Warrum: That is not my objection. The objection is that his attention should be called to the property that was owned by one or more of the plaintiff companies.

The Court: I don't know for sure, but I suppose the jury will have to have proof of ownership of this property, before anything can be recovered. The objection will be overruled. It goes to the order of proof, possibly, but I think I mill leave that to counsel to develop in their own way.

To which ruling and action of the Court, the defendants, and each of them, at the time, duly excepted and still except.

Mr. Drinker: We had just as leave prove our leases now as any time.

The Court: Proceed in your own way.

Q. Do you understand the question?

A. I think I do, but I wish you would ask it again.

2889 Q. Strike out that question, I want to ask another preliminary question first.

Questions

By the Court:

Q. Let me ask one question here, I want to get in my own mind. Did you, Mr. Witness, have charge of this development and construction of all of this property?

A. I had charge of the development and all of the construction that was done from the time we went there in 1903. There were some plants, however, that were partially constructed, but we added a great deal to those plants, and I had charge of all of those additions, and also of the additional development made in the plant.

Q. And have personal knowledge of that development and the expense?

A. Yes, sir, I have. I was engineer in charge and also superintendent, and visited the mines almost every day.

Questions

By Mr. Drinker:

Q. Now, Mr. Denman, in connection with your testimony here, you have divided the damages into sub-divisions, will you state, so that we may orientate ourselves that way, what are the subdivisions into which you have divided the damages, which you are testifying to here?

A. I divided those damages into three heads. The first was the loss due to physical damage to the plants, property and equipment, and the second was a loss of advanced development there through the loss of the plant, or the loss of the leasehold, and third the loss of the leasehold.

Q. Now, I am going to ask you this question, merely with reference to the value of the plant, with the development incident to it, there at No. 3 and 4, irrespective of the
2890 value of the leasehold, as a proposition from which you could make a profitable operation in the future, or as to the sale value of the leasehold, as to its operation; this question relates solely to the value of the plant there as a going concern at that time. Now, at the time immediately prior to the destruction, what was the reasonable value of that plant, equipment and development, and what was its value after its destruction, and you can itemize and explain that answer. First, give your answer and itemize it and explain it as you see fit.

A. Well, the plant, equipment and development that were placed there, was worth about $103,000.00.

Q. Now, in making that answer, have you made allowance for depreciation in such of the plant as was not new?

A. In the development I have made allowance for depreciation, and in addition to that, I allowed $7,400.00, that was received from the Cherokee Construction Company as insurance money; and then I have allowed a value on the salvage, and after making those deductions I add the improvements that were placed there and owned by the Prairie Creek Coal

Mining Company, were worth $103,000.00, or about that. It may be a little either way.

Q. Before the destruction, and how much were they worth afterwards? A. The salvage I estimated about $6000.00.

Q. What? A. I estimated the salvage about $6000.00.

Q. Was your $103,000.00 net loss, or is that the first figure from which the salvage is to be deducted?

Mr. Warrum: I object to what is his net figure.

The Court: I think the Courts almost universally recognize either way. He can state net or can state the
2891 items and find the net. I think it is entirely proper to cover it both ways.

Q. In the $103,000.00, before deducting the salvage and the amount received for the tipple when it was previously burned down, it leaves a net, after refreshing my memory, from $93,000.00 to $94,000.00.

Q. Now, give both figures, all there are.

A. The total valuation was $107,000.00. We received $7400.00 from the Cherokee Construction Company on account of the tipple burning previously, and then I figured the salvage at $6446.00, and that leaves a net of between $93,000.00 and $94,000.00. And in addition to that, there was about $10,000.00 worth of property that the claims were assigned. That is, that made up the $103,000.00 that I mentioned.

Q. What do you mean by the claims assigned? We want to get these items so we can check them up with the leases and titles to the property.

A. There was a certain amount of property there when we took over the leaseholds owned by the Cherokee Construction Company, and a large part of this we replaced, and renewed with new machinery, but there was still a considerable amount of that there. During a previous suit, all the claims for damages to this property were assigned to the lessee, the Prairie Creek Mining Company.

Q. In connection with what was that assignment made?

A. That was in connection with the suit of the Cherokee Construction Company to cancel their leaseholds, and I have added—that is the way I arrived at my $103,000.00 that I mentioned first, that is by adding on that amount, which was nearly $10,000.00.

2892 Q. So that your $103,000.00 does not include the value of that property that belonged to the Cherokee Construction Company?

A. My $93,000.00 does not, but my $103,000.00 does. That is, after deducting the insurance money received, and after deducting the salvage.

Q. Now, will you please take up the principal items in connection with this property, and state the value of each one, which has gone into that calculation?

A. May I read that from my list?

Q. If you can state it,—you can refresh your memory from your list, but you must state it from your own knowledge.

A. I made up this list.

Q. If you know of your own knowledge now that that is correct, you may so testify.

A. Well, I do. This list is a list of improvements that were placed at this mine by the Prairie Creek Coal Mining Company after they acquired it, and the first part of the list here don't include any value of salvage or the insurance money received, but deduct that afterwards.

Q. Now these figures that you are going to give, are they after allowance for depreciation for wear and tear?

A. Yes, sir, these figures I am going to give are after depreciating it.

Q. Your opinion of the value before the destruction?

A. And in that connection, there was a large part of this valuation that was so new, that there was practically no depreciation, and the development work don't depreciate it until you work the coal. When you talk of development work, development work is only depreciated by working out the coal tributary to its development, and where the coal is not
2893 worked out, there should be no depreciation in development work.

Q. When you mention the item of the development work, do you include in that all the development work, or only such of the development work that had not had the advantage of any working out in connection with it?

A. I only included the development work that had not been exhausted or worked out.

Q. Then your item is just advanced development work?

A. Yes, sir, advanced development work.

Q. Proceed with your list.

Q. One fan house and settings, labor, supplies and the foundation and setting the fan engine, and all of the appurtenances, $800.00.

One new tipple, which includes re-timbering the top of shaft, and all appurtenances,	$14,000.00
Setting three new boilers in brick with all appurtenances,	3,600.00

Two boiler fittings and so forth,	500.00
Moving boiler from No. 3 slope and setting up,	800.00
New boiler house,	900.00
Blower system,	2,000.00
Large steam line to Goo Goo Plane engine, covered with asbestos pipe, covering,	2,000.00
New first motion engine, foundation, engine house, the drill holes for the rope to run down, and the rope and sheaves,	2,500.00
Tank, foundation and trestle,	800.00
Water supply system,	3,600.00
Miscellaneous tools and supplies,	1,000.00
Pit cars,	4,500.00
2894 Rails,	$2,000.00
Cages,	750.00
Pumps and water columns,	1,800.00
Two gasoline engines and pumps,	800.00
Electric motors and wiring,	1,000.00
Supplies,	1,500.00
Barns,	1,200.00
Development,—this is advanced development mentioned,	18,332.00
Supply house,	1,200.00

Q. Now, one minute before you go on. The next item described, before you mention that, what is that, without going into figures?

A. Previous to this time, the old tipple had burned down and the mine had drowned out and in order to rehabilitate that mine, we were put to the cost of $16,000.00 to pump out this mine.

Q. Why do you think that is an item in connection with the value of the plant?

A. Well, because we spent that much money on the plant. We expected to get it back again, if we had been able to retain the plant and operate it. If we had not expected to get it back, we would not have gone to the expense of pumping it out. It is an expense of improvement just like anything. If you have any disaster at the mine, you expect to rehabilitate it, and put it in operation again, and you expect to get it back from the operation of your property.

Q. You mean to put it in as an incidental cost to keeping the mine up in condition?

A. We put it in as a necessary operation. Just like the Federal Trade Commission, in getting at their cost reports,

they have a contingent reserve, which covers items of
2895 this kind,—

Mr. Warrum (interrupting): The defendants desire separately to object to the argument being made by the witness, he can state the facts.

The Court: Yes, the objection is well taken. Just state the facts, which I believe he has done.

Mr. Drinker: I want you to segregate those doubtful items.

The Court: You are proceeding all right, it is a question of the witness going too far.

Q. Now, if that $16,000.00 for pumping is not a proper item in connection with the value of the plant, it should be deducted from your estimate of the total value?
A. Yes, sir, but I don't—
Q. (Interrupting.) Your total includes that?
A. Yes, sir, and I think it is a proper item.

Mr. Warrum: We move to strike out the answer of the witness, that he thinks it is a proper item; as an argument, and colloquy between counsel and the witness.

The Court: I think the answer may stand, the witness is qualified as an expert, in addition to being the owner.

Q. Now, go on with your list.
A. Changing shaft bottom, $700.00
Changing curve in shaft, about 150.00
Work on [sumj], 600.00
One Sullivan Mining Machine, with freight, wiring, and putting it in the mine, 2,150.00
Re-setting railroad track, or track scales, and draining them, 1,100.00
Q. Now, before you mention the next item, just describe what it consists of.
2896 A. In between April 6th, or after April 6th, the mine was drowned out again, and this is the cost of pumping out the mine the second time.
Q. Now give that.
A. $20,400.00.
Q. Now, make your deductions.
A. Well, the total of that is $107,282.00. Less amount received from Cherokee Construction Company, to be used in construction of the new tipple, $7,400.00. That is the amount of insurance. Salvage, $6,446.00. That deducted leaves, $93,436.00. Then I added on to this the claim for the loss of

the property owned by the Cherokee Construction Company, of $9,643.00, making a total of $103,130.00.

Q. Now, irrespective of the items which you have given, and looking at the thing as a whole, and as a going concern, what is your opinion as to the value of that plant before and after its destruction?

The Court: You mean the improvements, not the mine itself, the coal.

Q. Everything but the lease, not the lease.

A. You mean to use,—

Mr. Warrum (interrupting): The defendants separately object to this question, because it seeks to introduce by this witness a question of value, which is not the proper measure of damages.

The Court: The objection will be overruled. The Court is of the opinion that the proper measure of damages is the difference between the reasonable value before and after destruction, and the value may be arrived at in either of two ways; either by giving the reasonable value before de-
2897 struction and the reasonable value of the property after it had been injured, making the damage a matter of mathematical computation to be made by the jury, or it may be made by the witness, and the plaintiffs are at liberty to pursue either course, or complete the record by pursuing both.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: Is there a question in the record?

Mr. Perkins (Official Stenographer): I think so: "Looking at—"

Mr. Drinker: Just strike that out and I will ask it again.

Q. Now, Mr. Denman, irrespective of the items of calculation that you have made, was that in your opinion, the amount of damage that was done to that plant, taking it as a whole?

The Court: That is to Mine 3 and 4?

Q. 3 and 4, taken as a while, from the time that you saw it before its injury and afterwards; taking into account the value before and the value afterward.

A. It is the amount that I have stated, $103,000.00.

Q. Including the property that you have described as belonging to the Cherokee Construction Company?
A. Yes, sir.
Q. Now, did that include the value of the lease-hold incident to the property?
A. No, sir, that does not include any value of lease-holds.
Q. It does include the advanced development?
A. It does.
Q. Now, let us take Mammoth Vein No. 1—

The Court (interrupting): The jury will take their usual recess of five minutes.

(A recess was here taken of five minutes.)

2898 Q. Now, Mr. Denman, state independently of the itemized list that you have gone over what, in your opinion, was the reasonable value of the plant and equipment, as a going concern, of Prairie Creek No. 3 and 4 before and after this destruction, irrespective of the value of the lease?
A. Irrespective of the value of the leasehold?
Q. Yes. A. What you want is what?
Q. I want your opinion independent of these items,—independent of your opinion given by the addition of what these items,—I want your opinion of the value of the thing as a whole?
A. Of the entire plant before it was destroyed and what it was worth afterwards, the plant and equipment inside?
Q. Yes.
A. I think those two plants were worth from $125,000.00 to $150,000.00 before the destruction, and afterwards they were worth about $25,000.00 or $30,000.00.
Q. Now, let us take Mammoth Vein No. 1. Will you please describe the plant and development at the property known as Mammoth Vein No. 1?
A. At Mammoth Vein No. 1 the company owned 200 acres in fee and at least 360 acres from the Cherokee Construction Company at a royalty of 8 cents a ton. I remember one slope was opened onto land they owned in fee and they had driven a slope down on the land they owned in fee and had driven it across the land they owned in fee onto land owned by the Cherokee Construction Company. This slope was down about 2000 feet. The coal in this mine averaged over 7 feet in thickness, it averaged between 7 and 8 feet, and in some places it ran over 9 feet in thickness, as shown in the picture you submitted to me a while ago.

Q. Pick that picture out, Mr. Denman,—not that pic-
2899 ture (indicating), but the picture of Mammoth Vein No. 1. I do not mean the picture of you.

A. There is the Mammoth Vein No. 1 (indicating) where the slope is and the tipple on the Midland Valley.

The Court: What is that exhibit number?

Mr. Drinker: Exhibit No. 67.

Q. Go on with your description, Mr. Denman.

A. What was the last? Where did I end?

Q. How far was the slope down?

A. The slope was down about 2000 feet and from the slope there had been numerous entries driven onto the land of the Cherokee Construction Company. I think I have stated before that the coal averaged between 7 and 8 feet in thickness and had a very gentle pitch to the north.

Q. Is this plaintiffs' Exhibit No. 70 an enlargement of that picture?

A. Yes, sir, it is. That does not show all of it. It runs back a little further,—the tipple does.

Q. Go on.

A. The mine was opened up by a slope mine, and by a "slope mine" I mean a mine that starts in on the coal where the coal outcrops or comes to the surface and follows the coal down. This was a well timbered slope laid with a heavy steel track. It was laid with steel weighing 25 pounds to the yard and was well surfaced, and at that mine was a large tipple with shaking screen and a shaker engine and tracks on the tipple and sheave wheels and weighing pans and all the [paraphenalia] that goes with a tipple.

The tipple had a capacity of easily 1000 tons a day, if we could get that much to handle. Then there was a large 16 foot fan set in a concrete foundation, with a fan engine to drive the fan and steam piping and all the fittings
2900 and valves and lubricators that go with it. And then there was another 12 foot fan with engine to drive it with the necessary steam piping, fittings, valves and lubricators. And then there was an air shaft at each of the fans that went down to the mine.

And then in order to drive that plant there was a boiler house which was covered with corrugated sheet iron and inside of that boiler house were three large boilers, each of 150 horse power, and then there was a small hoisting engine that pulled the coal from the railroad tracks to the boiler

house and feed water pumps and a large lot of piping and valves and all the fittings that go with a large boiler plant.

Then there were injectors besides the feed water pumps. Then there was an engine house where was the hoisting engine that pulled the coal up out of the mine.

Q. Is that on this picture? A. Yes.
Q. Point it out, please, Mr. Denman?
A. This is a part of it (indicating).
Q. Point out the places on the map.
A. Here is what we call the tipple. There is the 12 foot fan, and the 16 foot fan is over here (indicating). The slope starts under ground right over in there (indicating); you cannot see that. Here are the three stacks of the three 150 horse power boilers, and here is the boiler house containing the three boilers and feed water pumps, piping, etc. In here is the large hoisting engine with the steel rope coming back here to the sheave wheel, and there are some cars on there now. The coal is brought up here (indicating) and here reaches the shaking screens with the shaker engine.

Now, in this engine house is an engine with gearing,
2901 with which we pulled ten or twelve cars out at a time. That caused us to use a large engine and pulled it very much faster. And we had steam separators to separate the water, and all the valves that go with it. And over in this building here (indicating) were two large air compressors, one almost new, that drove the pumps down in the mine. The pump ran away down to these bridges (indicating) and we had to pump the water from there for the mine. We had an air compressor that drove those inside pumps and drove some mining machinery.

And here was an air receiver where the air went from there to the receiver and went into the pipes that went into the mine. Here was another compressor (indicating) and here was the feed water heater where the exhaust went in and heated the water in the boilers.

Back here was a large tank on a concrete foundation where the water was pumped over from another mine and into the boilers. And right out here (indicating) was a shop where all of the blacksmith work was done with machinery, tools, etc. And here we kept all the props, ties, rails and lumber that was used in the mine and back of that there was a supply house where we kept machinery and fittings and different materials.

Right up on that tipple was another hoisting engine that was used to drop the cars. They would come up and be hooked onto another rope and let down 1000 or 1200 feet to another railroad,—so we could drop the coal onto the Rock Island tracks. Sometimes we could get cars on the Rock Island when we could not get them on the Midland, and sometimes we had orders not to ship over the Midland but we could ship over the Rock Island, and we had sometimes orders from the Rock Island for coal.

2902 Right back in here (indicating) was the mine foreman's residence. Inside of the mine were all of the tracks where the cars went down the slope and were divided off into different entries and laid with 16 pound rails in the entries and in the slope they were 25 pound rails. Then there was all of the entries or narrow work and we had in the neighborhood of 200 mine cars,—little cars like this (indicating) that cost at that time about $40.00 a piece. Also we had a lot of mules and a lot of miscellaneous equipment and supplies which I cannot mention in detail.

Then, down here on the Rock Island we had another tipple for loading coal on the Rock Island. You cannot see that on this picture.

Q. Is there a picture here that shows that? A. Yes.

Q. Pick that one out, Mr. Denman. A. Here it is.

Q. Referring now to plaintiffs' Exhibit No. 74, is that the Rock Island tipple?

A. Yes, that is the tipple that was built on the Rock Island so we could load on the Rock Island tracks. The tracks here come from the main line of the Rock Island.

Q. Is this one of the buildings that was destroyed?

A. Yes. That is where the cars come down on these tracks and they are dumped here and screened. There was a rock cut through here where we had an expensive piece of work. Here is where we dumped the rock that came from the mine. Here is a boiler house covered with galvanized sheet iron and there was one boiler there. Right on the side here, where you cannot see it, was an engine house that oprated a rope, an endless rope system to handle the railroad cars on the railroad tracks and that put us to consid-
2903 erable additional expense. Down here (indicating) we had to weigh the railroad cars and we put in a concrete foundation to put in railroad track scales such as at Mammoth Vein No. 1,—I did not mention those the first time.

Q. You had two, did you?

A. Yes, for weighing railroad cars. And right here (indicating) there was a deep well and a deep well pump and also a pipe line from this mine to the other so, if this pump ran out, we could get water from the other mine. That about covers it.

Q. Now, describe the inside development in connection with this mine.

A. Well, this mine had been developed across our land onto land released from the Cherokee Construction Company, and it had been developed up so that it had a capacity of over 700 tons a day. It was running between 600 and 700 tons.

Q. You mean it was running between 600 tons and 700 tons?

A. Yes, but it had gone up over 700 tons a day at times. It could be easily run to that capacity.

Q. Was 700 tons its maximum capacity?

A. No, it could be developed up higher, if we had the coal.

Q. What was its maximum capacity?

A. It had produced over 700 tons.

Q. What was the maximum capacity of the Midland Valley tipple? A. It could handle over 1000 tons a day.

Q. What was the capacity of the Rock Island tipple?

A. It could handle a like amount.

Q. What was the pitch of the vein at Mammoth Vein No. 1? A. About ten degrees.

Q. What was it at Prairie Creek No. 3 and No. 4?

A. It was about the same, maybe a little steeper in
2904 No. 4, about ten and one-half degrees.

Q. How much of that property that you have described and shown in those pictures was destroyed or injured between the times you saw it, before and after?

A. Well, at the plant on the Midland Valley, after the fire there was left the 12 foot fan and a large water tank and the supply house building and the mine foreman's house and the railroad track scales. All the rest of it had been destroyed.

Q. Which railroad track scales?

A. The railroad track scales that were in the railroad track.

Q. Didn't you say you had two?

A. I am only describing the plant at the slope on the Midland Valley.

Q. You have not come to the Rock Island?

A. No, I have not come to the Rock Island.

Q. Now, at the Rock Island, describe about that?

A. At the Rock Island practically everything was destroyed except the railroad track scales and a part of the rope of the endless rope system. The boiler was still there. The boiler was not seriously damaged, but all of the fittings were practically destroyed.

Q. Now, Mr. Denman, what, in your opinion, was the reasonable value, in July, 1914, of the plant known as Mammoth Vein No. 1, including the Midland tipple and the Rock Island tipple, all of the property you have described with that mine, as a going concern at that time, in July, 1914, including the advance development work, but not including the value of any lease that was appurtenant to that property?

Mr. Warrum: The defendants separately object to that, to the evidence sought to be introduced by that question, because it includes the statement as a going concern, and the good will.

Q. Excluding the value of any good will incident to
2905 that plant in your answer?

The Court: The objection is overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

The Witness: Please give me that question again?

The Court: Mr. Reporter, read the question.

Mr. Perkins (reading): "Now, Mr. Denman, what in your opinion was the reasonable value in July, 1914, of the plant known as Mammoth Vein No. 1, including the Midland tipple and the Rock Island tipple, all of the property you have described, connected with that mine as a going concern at that time in July, 1914, including the development work, but not including the value of any lease appurtenant to that property?"

Q. And excluding any good will incident to it?

Mr. Warrum: The defendants renew their objection.

The Court: The same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Do you understand the question, Mr. Denman?
A. Yes. I have estimated the value of the property destroyed was about $70,000.00, but the value of the entire plant was worth considerably more than that, I should say over $100,000.00. And after the destruction of the property, due to

the physical destruction of the property itself and the loss of the lands, why, it had very little value afterward.

Q. What was the plant worth after the destruction, in your opinion?

A. Well, I think I,—I estimated the salvage value was
2906 about $6,000.00, of the material left after the fire.

Q. Now, I wish you would take up in detail the items that you have mentioned and state what, in your opinion, was the value of each one of them, just as you did in connection with Prairie Creek No. 4, your present answer being in connection with Mammoth Vein No. 1.

A. One large tipple on Midland Valley Railroad, equipped with shaker screen and shaker engine, sheave, scales, bins, tracks, laid with heavy steel rails, all complete, $ 8,000.00

One boiler house, sides and roof covered with sheet iron, 450.00

Two 12-inches by 18 feet, 150 horse power boilers, with stack, setting and all labor of setting and foundations, 3,600.00

One 66 by 16 boiler, with stack, settings and with an ash conveyor, 1,500.00

Feed water pumps and setting, 250.00

Pipe valves, tools, steam traps, etc., 600.00

One gear hoisting engine to hoist coal from tipple to boiler house, set in place, 150.00

One boiler house, coal track, bins and hoisting rope, 300.00

One large engine house with galvanized iron sides and roof, 700.00

One Litchfield, one motion, 18 by 36 hoisting engine with foundation, pipe, setting, and 3000 feet of one inch rope, 3,500.00

One large new Ingersoll-Rand compressor, capacity 1500 cubic feet per minute, 4,500.00

2907 One Norfolk air compressor with pipes, fittings, including labor of setting, $ 1,500.00

One air receiver, set in pace, 250.00

One large cast iron feed water heater, set in place and connected with pipe, 400.00

	Miscellaneous steam piping, fittings, and valves,	600.00
	One blacksmith shop, wooden, structure, with all of the tools, machinery and supplies,	600.00
	One large supply house with contents, consisting of piping, fittings, bolts and different repair parts for machinery,	800.00
	One Water supply system with pipes, with a 500 barrel wooden tank on concrete foundation,	1,000.00
	One 16 foot fan on concrete foundation, with fan house, fan engine and and with steam pipe fittings, etc.,	900.00
	One 12 foot fan, with fan engine, with pipes, valves and fittings,	500.00
	One ten by twelve gear friction clutch engine, to drop coal to the Rock Island,	1,200.00
	Main tracks, switches, frogs and labor,	3,500.00
	Trackage, including switches and grading to the Rock Island,	3,000.00
	One set of railroad track scales with 18 inch steel I-beam set in concrete,	1,800.00
	Pit cars standing on tipple or close to tipple and destroyed by fire,	3,000.00
	Steam pumps, air lines, etc., down the slope,	4,500.00
	One large tipple on the Rock Island Railroad,	4,500.00
	One boiler house with sides and roof covered with galvanized iron,	400.00
2908	One 80 horse power boiler set in brick with steam pipes, injectors, deep well pump, with miscellaneous, fittings, etc.,	1,800.00
	One geared endless rope engine with all of the valves, fittings, tools, etc., including the labor of setting,	3,000.00
	One engine house the sides and roof of which was covered with galvanized iron,	350.00
	One endless rope system that handled railroad cars consisting of 3,000 feet of three-quarter inch rope, with	

sheaves, etc., including ropes and stretchers and the labor of setting	1,500.00
One railroad track scales with steel I-beam and with self registering device, set in concrete foundation,	2,000.00
All development, consisting of open slopes, air shafts, drill holes and drive slopes with air ways, pond, deep well,	20,000.00

Q. Is that $20,000.00 all of the development?

A. That was the development of opening the mines and ponds and drill holes that I did not mention before. It does include advanced development on the lands of the Cherokee Construction Company.

Q. Solely on your own lands. A. Yes.

Q. What is the total? A. Total, $76,650.00.

Q. Now, how much of that had any salvage value in connection with each item?

A. The hoisting engine had some salvage value,—$600.00. There was some pit car iron saved, although the chill was taken out of the wheels, and softened them, $200.00.
2909 The four boilers, $2,800. The wooden tank was not burned, $300.00. One 12 foot fan, $150.00. Rails, $300. Two sets of railroad track scales, $600.00. Air compressor, $400.00. Miscellaneous junk, $400.00. Making a total of $5,750.00.

Q. The total is how much? A. $5,750.

Q. Now that total value that you have attributed to these properties that you have itemized, was that reckoned after deducting depreciation or before?

A. That is before depreciation. And then I depreciated it in proportion to the coal that was worked out.

Q. How much will that reduce the total figures, if you know?

A. It reduces it altogether,—after deducting the salvage—

Q. (interrupting). No, don't just give your estimate, but state on what you base your depreciation?

A. I depreciated it 15 per cent.

Q. Why did you do that?

A. Because there was that proportion of the coal worked out. Out of 430 acres of coal there was about 55 acres. A large part of the coal on our own land had been worked out, so I depreciated our development and everything else by 15 per cent. That was the proportion of the coal in the land that had been exhausted. That leaves a balance of $65,152.00.

Q. Then, deducting the salvage value you have attributed to the items for salvage value, what would that leave?

A. $59,402.00.

2910 Q. Along in the beginning of your testimony as to this mine you gave a value to this plant irrespective of the items; was that value based on the actual value at that time or with proper consideration for depreciation or, what was it based on?

A. It was based on what I considered the plant to be worth.

Q. At that time?

A. Yes, at that time. Then, to that I have added the advanced development on the Cherokee Construction Company land.

Q. State what the advanced development consisted of, and your reasons for adding it on, so we can understand the item.

Mr. Warrum: If the Court please, the defendants separately object to the testimony sought to be adduced by this question as to advanced development on the lands held under the lease from the Cherokee Construction Company as not a proper item to be considered.

The Court: I assume that the question of whether or not that is a proper item to be considered involves the question necessary of whether or not the destruction of this property was the proximate cause of its lessened value or destruction. The question of whether or not the destruction of this mine was the proximate cause of the injury to or destruction of that property is a question for the jury to determine under proper instructions by the Court. The objection is overruled for that reason.

To which ruling of the Court, the defendants, and each of them, then and there duly excepted and still except.

A. We had driven our slope across our own land on to some land we had leased from the Cherokee Construction Company. Now we did not have a great amount of coal ourselves, so in order to continue the life of this mine and get the advantage of the large amount of improvements we put

2911 there, we had to acquire additional lands and we did this by leasing from the Cherokee Construction Company 350 acres adjacent to the land we owned ourselves. We had it shot off from the out-crop, but they were to the dip of us. We leased this land at eight cents royalty per ton for every ton we took from this land. In order to develop this lease and get the coal out of it we drove our slope across our land onto these lands. Slopes are expensive things to drive

and we had driven over there approximately 400 feet on to these lands and we had turned the entries in each direction, and had started to work out these lands that we had leased.

Now, we had not taken out only a small part of the coal adjacent to this narrow work we had driven and through the destruction of these properties we lost this land we acquired from the Cherokee Construction Company, —

Mr. Warrum (interrupting): If the Court please the witness is making an argument and stating the very fact your Honor said would necessarily be for the determination of the jury.

The Court: The jury however, must determine that from the facts as they existed, and I understand the statement of the witness is an outline of the conditions that existed there on which the claim for damages is based. The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time, duly excepted and still except.

A. (Continuing.) In order to get this coal we made this improvement on this land. Through the destruction of these properties we lost this [leas-hold] and lost these coal lands.

Now, we had expected in driving these entries,—with-
2912 out getting any return, we had expended $8,600.00, and I have added that to the value of—or added that to the amount which we lost by the destruction of the mine and property.

Q. Was that $8600.00 the reasonable cost of that development you have mentioned? A. It was.

Q. Now, even if the leases had not been cancelled, would that advanced development in any way have been affected by the physical destruction of the properties?

A. Well, if the leasehold,—if we had not lost the leasehold, by rebuilding the plant and opening up the mine again we would have gotten the use of that, but it would have been necessary to rebuild the plant and pump out the mine, but the development was lost through the cancellation of the leasehold.

The Court: What was the amount of that?

A. $8600.00.

Q. Is that included in the fifty-nine odd thousand dollars?

A. No, that is in addition to the $59,402.00, making a total of $68,002.00.

Q. (By Mr. Drinker.) Now, in figuring the cost of that entire development and so forth, you have just described, what items have been included and what excluded, as a general proposition?

A. In driving the entries, I included just the contract price for narrow work. That includes entries, courses and cross cuts. I did not add anything for rock that falls—a certain amount always falls that has to be cleaned up. Nothing was added for that work or any additional work of the drivers or timber-men and so forth.

Figuring on the cost of driving slopes, we drove them aside and had to put on additional men, and I figured in the
2913 contract price we paid the men driving the slope. And also the cost of the rope rider and the extra rope we had to put on on account of the extra men at night.

Q. In connection with the lease you have spoken of had you paid any advance royalty for coal you had not mined out, if so, describe the nature of an advance royalty, what is the idea of it and what had you done in that connection?

A. In order to acquire a lease of the additional coal lands, we had to pay a certain amount. The amount was $2400.00 a year, whether we took out any coal or not. Now, in the beginning we knew we only had a small acreage of coal adjacent to our mine, and we knew that in a short time we must have more coal lands. Now, in order to hold this land,—they would not let us hold it without paying them something,—this 360 acres of coal land, and we had to pay them $2400.00 a year to hold it. We held it a number of years before we got into it, and we were paying this $2400.00 a year, and we paid in all something like $20,000.00, but then, later on we mined out some coal so that it reduced it,—what we called the dead rental for which we received nothing, between $12,000.00 and $13,000.00. In other words, in order to hold that lease, we had to pay out $13,000.00 in order to hold this leasehold, but in making my estimate I did not count that in at all in the value, but that was lost. It was paid to the Cherokee Construction Company in order to hold the land.

Q. That was not included in the physical damages? A. No.

Mr. Warrum: The defendants object to this as speculative.

The Court: The objection is sutsained. He admitted
2914 that was not included.

To which ruling of the Court, the plaintiffs, and each of them, at the time, duly excepted and still except.

Q. But in the estimate of the value of the plant, irrespective of the items, did you consider that proposition and all other questions concerning your investment in the property?

A. I considered that as part of the investment, but did not include it in my estimate of the damages.

Q. Your itemized estimate?

A. Yes, my itemized estimate of damages.

Q. Now, with reference to the Sebastian County Coal Company, which mine is that? A. It did not have any mine.

Q. Not that one, that was a lease-hold. The Coronado. I show you Plaintiffs Exhibit No. 69, is that the Coronado Mine before its destruction? A. It is.

Q. Now, come down here and go over this map the way you did No. 1 and describe to the Court and jury what this consisted of?

A. (Witness goes over to map and testifies pointing to map in question.) Now this is the Coronado. It is a shaft mine, or vertical hole driven straight down in the ground. The shaft is about eight feet wide and sixteen feet long and 180 feet deep down to the coal underneath. Now, this part here (indicating) is what is known as the tipple and has the cage coming up here that dumps and the coal goes through the screens and here are the railroad cars.

Q. What do you mean by cages?

A. The cages are where the mine cars go or the cages. And the cages come up and are turned over. They
2915 turn at an angle of 40 degrees and the coal runs into the weighing pan where it is weighed and the coal goes down through the screens into the railroad cars. This is what is called the tipple and this part here they call the head door where the sheaves are and the ropes that lower the cages up and down. Here are the screens and the slack coal went down here (indicating).

This building here is what is known as the washer. The slack coal to the bins and was elevated up here (indicating). What I mean by washing is that the coal has the slate and dirt taken out of it in order to make it clean. In that washer was an elevator and shaker screens and bins and jigs, and it went from there into different troughs, and then it went into the cars. That washer had been in operation about two years before it was destroyed.

Now, here is a rock plane and it was dumped into bins and down into the cars. Here is a gear hoisting apparatus. Back in here are the stacks of five boilers. There is the boiler house back there (indicating). You can not see it on account of

[te] other building, but there was a boiler house there made of galvanized iron containing five boilers with all of the [paraphenalia] pertaining to it, and in here was the engine house where the hoisting engines set that hoisted the coal out of the mine, made out of galvanized iron and in that was an 18 x 36 hoisting engine, also an air compressor, and then at the bottom there was a pump and electrical equipment we had installed for hoisting and steam pumps and water pipes. And these were ponds (indicating).

Right at the side was the blacksmith shop with tools and out there were a couple of electric motors stored and back here further was a supply house, with ropes, nails, repairs for machinery and so forth. Right back of this was
2916 the stable where we kept the mules and further back was the mine foreman's house. Way back that way where you cannot see it (indicating) was the store building. Right underneath this (indicating) was the shaft.

Inside of the mine there were two inside slopes. There was another hoisting engine right out here (indicating) that you cannot see, with a steel rope that run over a wheel down into the mine, and on the other side another engine and a plane ran up about 1500 feet where there was another sheave that dropped down into the mine operated by an air compressor. We also had electric pumps and there were transformers back here for transforming the electricity.

Inside of the mine there were a great many pit cars that ran on the different tracks and there were cages and wire rope. Now, this mine at one time hoisted 1000 or 1100 tons a day.

Q. For how long, Mr. Denman?

A. For a long time. At a time previous to the destruction they were getting out from 500 to 600 tons a day.

Q. How long did it keep up 1100 tons a day?

A. It ran from 1000 up to over 1100 for a year or more.

Q. Was it in condition to do that at the time of its destruction?

A. All of the plaint, I am sure, was in good condition to hoist as much as it ever had. It could have hoisted more than that if we could have gotten the coal to hoist. It could have handled 1500 tons a day easily if the coal had been there coming up.

Q. Have you described the whole plans, upstairs and down?

A. Yes.

Q. Have you described the development in a general way?

A. The development consisted of the entries and the narrow work and one plane up the hill and one pit from the
2917 west and one pit from the east side with the entries turned off of them and the tracks, and the pumps down to each deep entry, and there was a safety system at the different places,—all of the miscellaneous equipment that goes with a mine of large capacity.

Q. Now, Mr. Denman, take the stand.

(Witness resumes witness stand.)

Now, what in your opinion, was the reasonable value of that plant in the year 1914 as a going concern, excluding the good will and excluding the value of the lease held by the company. A. It was over $100,000.00.

Q. Now what was it worth after the destruction?

A. Well, it was not worth anything because we had lost all of the property except the salvage. There was some salvage value there, about five or six thousand dollars worth of salvage.

Q. Now will you please take up, as you have done in the other properties, an itemized statement of the property, all of the items of the property that was destroyed, and give your opinion as to the value of each item before its destruction and then itemize the items which had any value after the destruction, so we may have those two sets of items and then make the calculation.

A. In my general list of equipment of that mine I omitted to mention we had to pay for all grading and ties for those railroad tracks, and there was a hundred ton track scale below the tipple where the railroad cars were weighed which I did not mention in going over the list.

Q. If there are any items here you did not mention you can mention them now.

A. Here is the list of this equipment that was placed at this mine.

Q. Was this before deducting the depreciation or afterwards?

2918 A. That was after it was put down before depreciation. This mine was opened up and developed by ourselves. We developed the mine and sank the shaft.

Q. You came to the bare ground, did you? A. Yes.

Q. Go on.

A. Grading, ties and salvage for railroad siding from the Frisco Railroad, $3,376.29

One large shaft tipple with screens, weighing bins, scales, cages, sheaves and so forth, 4,500.00

One 450-ton coal washer complete with elevator jig screens, shaft engine, tanks, pumps, piping, 18,071.00
One large boiler house with sides and roof covered with galvanized iron large enough to hold five boilers, 1,000.00
Five horizontal boilers including the setting, steam pipe fittings, water pumps, water heater, pipe valves, whistles, tools and so forth, including labor, 6,000.00
One pond and water supply system with water pipes, pumps, tank, 2,000.00
One engine house with galvanized sides and roof containing one 18 x 36 Litchfield first motion engine with fittings, including labor of setting, 3,800.00
One Ingersoll-Rand Air Compressor, with foundation, steam pipe air receiver, freight on same and labor of setting, 1,800.00
One 10 x 12 geared hoisting engine with valves fittings, tools and lubricator including setting in place, 1,200.00
2919 One large supply house with miscellaneous machinery, tools and supplies, $1,000.00
One shop with tools and machinery, one 25-horse power electric motor stored away and one smaller motor, 1,200.00
One 10 x 12 gear hoisting engine to operate through drill hole, including setting, and rope, the engine not destroyed, value of setting lost, 1,500.00

Q. Is the engine included in that $1500.00?
A. Yes, but I counted that as salvage afterwards in my list of salvage.
Q. Go on.
A. One drill hole, $150.00. That is where the rope went down.

1500 feet of ¾ inch rope, 150.00
Sheave wheels and setting in frame, 75.00

A. One barn scale and lot, $400.00 That was not burned, but I counted the salvage afterwards.

One 12 foot Attumwa fan, fan house, engine with steam pipe fittings, lubricator and labor, 650.00
One 8 x 12 friction clutch engine and operating rope through drill hole with foundation, setting, pipe receiver and including labor of setting, 1,800.00

One engine house,	1,500.00
1600 feet of ¾ inch wire rope,	160.00
Sheave wheels with labor of setting	75.00
One store building,	800.00
Pumps and general piping inside,	800.00
General pumping in shaft	500.00
Electric haist, including setting,	700.00
1500 feet of ¾ inch rope,	100.00
Tracks, and rails inside of mine,	4,947.00
2920 200 pit cars $35.00 each,	$7,000.00

The salvage on these was 40 cars and irons for fifteen cars.

Mules,	1,800.00
They were not lost, but counted as salvage.	
General supplies,	1,500.00
One large track scale with steel I beams and self registering device in concrete foundation including freight and labor of setting,	1,800.00
Two gasoline engine and pumps,	1,100.00
Two shafts with drill holes,	21,089.00
General development,	15,000.00
Pit boss's house,	400.00
Total	102,249.00

The Court: At this point we will take an adjournment for the noon recess until 2:00 o'clock.

2921 Wednesday, Nov. 7, 1917. 2:00 o'clock, p. m.

Court reconvened pursuant to adjournment, the parties appearing as before, and the following proceedings were had:

HEBER DENMAN, resumed on direct examination:

By Mr. Drinker:

Q. Mr. Denman. you were about half way through, or you were down to the total on Coranado, I think, were you not? A. Yes, sir.

Q. Well, continue,— then you gave the total of the value before the destruction of all those items which you included in that list of $102,249.00, I believe?

A. I did.

Q. Now, how much of that,—now please state what part of that property had a salvage value, and what was the value of the part of that property that was left after the destruction? A. Itemize it.

A. Well, [practicall] of the plant was destroyed by fire. However, the fan was not burned, or the mule stables or

the mules. The scales were not burned. Practically everything else about the mine was destroyed. There was one little engine house near the mine that was not destroyed, however. The following is a list of salvage that I made an estimate of. The washer engine and five boilers,—

Q. (interrupting). Give the value of each item, after the destruction?

A. They had all been through the fire. Most, but not all of them, but part of it.

	One washer engine,	$75.00
	Five boilers,	375,00
	One 18 by 36 hoisting engine,	400.00
	That was sold for $400.00.	
2922	One geared Florrie hoisting engine,	$200.00
	One 10 by 12 Florrie engine,	700.00
	That is the price it sold at.	
	One barn,	40.00
	One 100 ton track scale sold for	300.00
	Forty pit cars and iron sold for	750.00
	Miscellaneous junk	150.00
	Mules	1800.00

Q. They were not injured at all?

A. No, sir, nothing at all Fan, 100.00

Then there is the cost of the plant, less the salvage, which leaves $97,350.00.

Q. These $4900.00, as you estimate, is the value of this property after the destruction, it is?

A. Yes, sir, and after that loss of the lease hold.

Q. Now, I show you Exhibit 69, which you said was the Coronado plant before the destruction. Is that it?

A. Yes, sir, that photograph is of the plant before the destruction.

Q. Now, I hand you Exhibit 94, and ask you if that is the some plant after the destruction, and I will ask you to point out, by comparison of the two, so as to show the different position of the items destroyed. Now point out on picture 94, and take a pointer and compare so the jury can see how they compare with one another?

A. The shaft is right there (indicating). Now, over here you see that caved in, that is where the timbering was burned out of the shaft. All of this tipple was around that, and I can't tell from this just where it was. This was all built around this hole. You see the hole is right under here,

and it went right down in the shaft. When this
2923 burned, it let it all give in, probably 40 or 50 feet across, and this is the post where that stood.

Q. What are those ropes here?

A. Well, those are the ropes that went from the engine house over those sheave wheels and around the shaft and was a cage that went down in the mine, and the ropes were hanging.

Q. Now, these figures that you have given as to the added itemized value of the different items named, with the salvage off, were they prior to deduction for depreciation or afterwards?

A. They were prior to deduction for depreciation.

Q. Now, what depreciation, in your opinion, should have been deducted from those, in view of the circumstances surrounding the events, as of that date, in your opinion, 1914?

A. On account of part of the hole being worked out, I considered that the value of the plant and of the improvements inside, had been depreciated in proportion to the amount of coal taken out, and there was about 40 per cent of the coal worked out, so I depreciated the values by 40 per cent, and after depreciating 40 per cent, it left a value of $58,000.00. But I considered, if there had been no fire and no destruction, the [machiner] that was left there, the washer would have been worth about $12,00.00, which I added, making a total of $64,826.00, as of the value of the property destroyed through the burning or through the [lose] leasehold. That valuation in 1914.

Q. Now, was there any insurance collected on this particular plant, if so, how much?

A. Yes, sir, there was about $5984.00.

Q. The $12,400.00 which you stated is the salvage, you mean that would have been the salvage value after the coal was worked out?

A. Yes, sir, if the property had not been destroyed,
2924 if it had not been burned. That was just the machinery. I mean, when I speak of salvage of that kind, that is just the machinery, because in installing a mine, you have to put in a good many foundations, and things that are of no value after the coal is worked out. In installing boilers you have to put in foundations and settings, and all that, and when the plant is moved away, all that part is of no value at all. All that is of value is what you can move away, and I accounted the salvage value of $12,000.00.

Q. As to what would have been the value after the coal was all worked out? A. Yes, sir.

Q. Now, let's turn to Mammoth Vein,— now, let's take the Dallas mine. That mine was not much damaged, was it?
A. Yes, sir, it was some damaged.

Mr. Warrum: The defendants separately object to any itemization or valuation of the Dallas mine, or estimate of loss there, because it was located on the property, as I understand, of the Hartford Coal Company, which was not engaged in the production or shipment of coal, according to the allegations of the complaint, and the proof already adduced by the plaintiffs.

The Court: I don't call to mind the statement in the complaint.

Mr. Drinker: I understand that the objection is that the Dallas Coal Company, or the Hartford Coal Company that owned the Dallas mine was not in operation at that time, and I think under the Court of Appeals' decision that doesn't make any difference.

The Court: The mere fact that they owned a mine, or mining property, up there would not be sufficient to
2925 justify them in recovering damages.

Mr. Drinker: The allegation is that they did intend to operate.

The Court: But what is the proof?

Mr. Drinker: I can ask Mr. Denman about that now.

Q. Mr. Denman, was it the intention of the Hartford Coal Company to operate the Dallas mine when they got around to it?

Mr. Warrum: The defendants object to that separately as leading and suggestive.

The Court: It is somewhat leading, but he may answer, however.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. The reason that the Dallas mine was closed down was because at that time there was not sufficient market for the coal, to keep all the mines in operation, and at this time the Dallas mine was not in operation, but it was the intention to operate this mine as soon as there was a demand for the coal, enough to keep all the mines going.
Q. And what about the Hoffman mine?

A. The Hoffman mine was in operation.

Mr. Warrum: I understand that the Hoffman is not involved by any allegation here. It is a strange mine to me, but has been referred to once or twice. It is not referred to in the complaint.

The Court: You will have to point out to me where it was mentioned in the complaint.

Mr. Drinker: It was part of the property of the Hartford Coal Company. I didn't know that it is mentioned in there.

2926 The Court: What allegation covers it?

Mr. Drinker: I can find it in a moment. In the summary of damages, part of the damages alleged is the loss of value of the leasehold,—I am not sure that it is mentioned in here by name.

The Court: We don't want proof of any mine that is not reasonably within the allegations. You cannot prove damage to any mine of which you have not given the defendants notice by the pleadings.

Q. Now, let's go on with the Dallas mine, and then we will come to the Hoffman mine later.

The Court: Did I understand you that the Dallas mine had been operated before, in conjunction with the other mines? A. Yes, sir.

The Court: The objection will be overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Mr. Warrum: If the court please, may I ask the witness a preliminary question?

The Court: Yes, sir.

By Mr. Warrum:

Q. Mr. Denman, how long had the Dallas mine closed down?

A. I don't recall how long, for sometime, though.

Q. For two years?

A. I think it was over a year.

Q. It was over two years, was it not, Mr. Denman?

A. I don't remember just the length of time, in the neighborhood of two years, over a year.

Q. And the reason it was closed down, or shut down, was there was not enough demand for coal?

A. There was not sufficient demand for coal to keep
2927 all the mines in operation.

The Court: Proceed with your examination.

Mr. Drinker: In 23, the allegations is as follows: "That the Hartford Coal Company has not been in operation for over a year previous thereto, but it was the plan and intention of said company to also reopen upon the non-union or open shop basis as soon as it became expedient so to do, or at least in the summer of 1914." It didn't mention any of the mines by name.

The Court: I see. Objection overruled. I think that is entirely within the discretion of the defendants, if they proceed to trial on this complaint, they could have demanded a bill of particulars, and they have seen fit to proceed, and the objection is not well taken.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Warrum: Following the preliminary questions, we again renew our objection for the purposes of the record.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Now, without going into a detailed description of all of the property at the Dallas mine, state what particular items of the equipment at the Dallas mine were injured in connection with this destruction of property to which we have been referring

A. There was a large boiler dynamited, the ends, the tubes were all sheared off, and the ends bulged, and the engine house burned down, and the end of the tipple and rock trestle was burned, and the engine was damaged, and the wire rope on the engine was burned, and the fittings
2928 and valves, etc., that go with the engines were destroyed.

Q. Were these items total losses, or were they partial losses?

A. The engines were only a partial loss, and the boiler was not a complete loss, but it was very badly damaged by having all the ends, the tubes and front bulged out by this explosion.

Q. Now, taking each one of those items, state the reasonable value of the item before and after its destruction or injury?

A. Well, I estimate that the boiler was damaged $600.00

Q. No, I want you to state the value of the boiler before destruction and after?

A. The boiler and settings and everything, or just the naked boiler.

Q. Whatever the unit was that was damaged, take that value of the thing before and the value after?

A. The value of the boiler, with settings, was about $1500.00 and it was worth about $900.00 afterwards. It cost about $600.00 to repair it, and put in all new tubes, and repair the ends.

Q. Now, the next item?

A. The tipple,—the end of the tipple was burned down, and the rock trestle was burned off, and it would take about $300.00 to repair that tipple.

Q. What was the value of the tipple before the loss?

A. The value of that tipple before was about $3,000.00.

Q. And how much less was it worth afterwards?

A. Just what it would cost to repair it,—$2700.00.

Q. Now, the next item?

A. The engine house was, it was an engine house, wood and galvanized iron and it was completely burned down and it was completely lost. It was worth $300.00 before, and was worth nothing afterwards. In the engine house there were two engines, one was in use and the other was a smaller engine not in use, and those engines had a value of
2929 $2,000.00 before, and they had very little value afterwards; $500.00 would cover the value, making a loss of $1500.00. All of the steam pipes and valves and fittings and everything,—we had a deep well pump there, they were destroyed and their value was $250.00, making a total of $2,950.00.

Q. Which represented what?

A. Represented the loss of the property at that time.

Q. By reason of its destruction?

A. By reason of its destruction, yes, sir.

Q. Now, coming to the Hoffman mine of the Hartford Coal Company, was there any damage done there other than the loss to the leasehold of that company by reason of this destruction we have been discussing?

A. No, no destruction.

Q. No physical loss?

A. Not through destruction of property.

Q. Was there any other loss to the company by reason of this destruction, other than the value of the leasehold?

A. Please repeat that question?

Q. Was there any other loss to the company at the Hoffman mine, to the Hartford Coal Company at the Hoffman mine, than the loss of the value of the 20 acre leasehold that that company had? A. Yes, sir.

Q. Now, explain the situation which gave rise to that loss?

Mr. Warrum: Now, the defendants separately move, or object to the introduction of evidence with reference to any loss at the Hoffman mine, because it belonged to a corporation that has not been engaged in the production or shipment of coal within a long period before, and stopped
2930 the production and shipment of coal because there was no demand for it at the time they stopped, and had no expectation to commence shipping coal until the demand for it was sufficient.

The Court: Objection overruled. I think the testimony is broad enough to cover that, he said it was the intention of this company to start.

To which ruling of the court the defendants, and each of them then and there duly excepted and still except.

A. It was the intention of this company to operate or mine from this mine part of the coal that they owned themselves. Now, this mine was opened on land owned by the Hartford Coal Company, owned in fee.

Mr. Warrum: The defendants separately object to the answer of the witness, because it is not an answer to the question, but apparently is an answer to the suggestion of the court. The question here is as to the loss.

The Court: You may enter your objection.

Mr. Warrum: The defendants severally objects to the testimony now being given by the witness because it is not responsive to the question of plaintiffs' Counsel, because it is a discusion now of matters not related to the question asked by plaintiffs' Counsel, but it is as to the intent and purpose of the Dallas Coal Company, and because the witness is undertaking to give an interpretation to their intent.

The Court: Objection overruled. We will assume that this is intended by the witness as a response to the question that was asked.

Mr. Drinker: I would like to say, for the guidance of
2931 the court and jury that I know of no such mine as the Dallas Coal Company.

Mr. Warrum: I will correct that to the Hartford Coal Company.

A. This mine was opened on land owned by the Hartford Coal Company and it was a mine that had been developed to a large capacity.

Q. How much?

A. About 500 tons a day; and it was the intention to not only work the coal that belonged to the Hartford Coal Company mine, but also to work some coal from the Cherokee Construction Company lease, that I mentioned before, to work out some of that coal. Now, through the destruction of these other plants, this leasehold was lost.

Q. Your leasehold?

A. Of 360 acres from the Cherokee Construction Company. Now, by the loss of this leasehold, we lost a part of the value of that plant, because we did not have the coal to work out through that plant . We put up a plant to work out a certain amount of coal, and we lost the coal land, and the plant was not valuable because we didn't have the coal to work out through the plant, and I estimated that this plant and all the improvements was worth $35,000.00, and through the taking away of this land that we intended to work with the plant, I considered that it was worth one-third less, which would amount to a little less than $12,000.00.

2932 Q. Now, let us come to Mammoth Vein No. 6. Was that property much damaged by the destruction and loss that we are discussing?

Mr. Warrum: If the Court please, the defendants separately object to the witness testifying as to damages to Mammoth Vein No. 6 because the company owning Mammoth Vein No. 6 was not engaged in the production and shipment of coal at that time, nor had it been.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. Mammoth Vein No. 6 was not damaged at all by the destruction of the property. It was only damaged through the loss by cancellation of the leases of the company.

Q. What loss was there incident to that?

Mr. Warrum: If the Court please, the defendants object to the witness testifying as to losses that might have resulted from the cancellation of the lease, because it takes the witness into the realm of speculation as to damages and profits.

The Court: The only question here is whether or not this is too remote; whether or not the question of a leasehold is too remote as an element of damages.

Mr. Warrum: I realize that and when I used the word "profits" I meant remote profits.

The Court: I have been considering this question and the fact that we must reach it I think it can be an element of damages in this case if the destruction of this property was the proximate cause of the loss of the lease-holds and
2933 the question of whether or not this lease-hold was lost by reason of the destruction of the property, and therefore that the destruction was the proximate cause of it, is a question that must be determined by the jury under the facts as they find them and under the law that shall govern the consideration of that issue as it shall be given to them by the Court. For those reasons the Court will not now determine that this loss was not the proximate cause, believing that that is a question that should be submitted to the jury. The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Read the last question.

Mr. Perkins(reading): "Now let us come to Mammoth Vein No. 6, was that property much damaged by the destruction?"

Mr. Drinker: I will ask it again.

Q. What, if anything, were the items which were damaged at Mine No. 6 by reason of the destruction and circumstances we are discussing?

Mr. Warrum: The defendants separately object to the witness testifying as to items of loss at the mine of Mammoth Vein No. 6 because the company owning Mammoth Vein No. 6 was not engaged in the production and shipment of coal.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. In order to answer that question I will have to offer a little explanation that this property was leased from the Cherokee Construction Company and already equip-
2934 ped, but after leasing this property we added some machinery and went to some expense in adding this machinery. Now, this is a list (indicating) of what we added and the cost of adding to it. We installed—this is just the cost of setting this air compressor. Cost of setting one Norfolk Air Compressor, foundation, freight, fitting, water supply and building over compressor; that with the labor of setting amounted to $1200.00.

Q. Was that the reasonable value of that equipment?

A. Of that labor. I do not make any claim for the equipment. We make claim for the labor of setting it.

Q. Was that, in your opinion, the reasonable value of so much of that item as had been contributed by you in July, 1914? A. It was and is.

Q. Was that a total loss?

A. By losing that line through the cancellation of the lease we lost all of the labor and time we had put in doing that work.

Q. What else?

A. Moving one boiler from another mine and setting up boiler, with all of the labor, $350.00.

Q. Is that item covered by similar circumstances to the one before? A. Yes.

Q. What is the next item?

A Miscellaneous blacksmith tools, supplies and equipment left in the shop that was lost, $500.00.

Q. What else?

A. We placed in this mine, after leasing it, 37 mine cars, and these were lost and their value was, $600.00; making a total of $2,650.00.

Q. Now, was there any damage in connection with Mine No. 6? A. Yes.

2935 Q. What was that? Describe it first and then state what it was.

A. After acquiring the lease from the Cherokee Construction Company we leased from the McKitchen heirs 152 acres of land adjoining this mine and in order to develop this we drove a slope about 1100 feet along into this land and turned entries and did a lot of development work. Then this destruction came and the leaseholds were taken away and we lost the mine and through the loss of the mine we lost all of the work we had done on the McKitchen lease and that amounted to $13,650.00.

Q. Now, coming to the value of these leases that were cancelled, I wish you would state to the Court and jury what considerations there were in connection with the operation of these mines which gave them especial value, just in your own way.

A. These lease-holds had a special value from the fact that they were all developed and had large mining plants at each one, mining plants of large capacity.

Q. Is it more economical to operate a number of plants in a group than the total operating cost of each separately or alone?

A. It is cheaper to operate a number of mines in a group than to have them widely scattered.

Q. Why is that?

A. The management is easier. One man can manage a group of mines and the shifting of material back and forth is easier. The operation of a group of mines is cheaper than to operate scattered mines because then you have to have a superintendent at each scattered mine and there is no such close supervision.

Q. What other considerations were there that made these leases of peculiar value?

A. These lease-holds had large extensive mining plants at each one, with mines developed up to a large capacity.

2936 There had been a large amount of development work done on each of the lease-holds.

The Court: What do you refer to now?

Mr. Drinker: The whole thing at once. This is the general consideration of the group. Then I am going to take up each lease separately.

A. (Continuing.) In addition to this, the coal was very thick, the thickest in the Arkansas field, running from six feet to nine feet in thickness. The lease-holds were along the out-crop of the coal where it was cheaper to operate, and the coal was among the best in the field, and they had good railroad facilities. The mines were located on three different railroads, on the Midland Valley, on the Frisco and one on the Rock Island—one tipple on the Rock Island. And from the further fact that practically all of the good coal land in the state is taken up and held by the large companies. There is no coal land at any reasonable depth and any thickness to be obtained. And in addition to this the coal is high grade smokeless coal, and the principal thing is that coal land as scarce.

Previous to this we had gone through a period of depression. But now, at this time, the price of oil had commenced to go up, and later went up. And the companies had all gone through a process of development. The mines had to be opened up and had to be improved and developed and they had come up to the stage of development where most of the expenses were behind them and over, and all these items made these leases valuable leases. And they were necessary to the operation of these large plants, these large plants could not be operated without these lease-holds.

2937 Q. Can you state roughly how much available coal there was mining incident to all those properties that you had there or under lease?

A. We owned and had leased together approximately 2700 acres.

Q. About how much coal was there altogether in that minable?

A. Practically all of it. We had mined out altogether 400 acres.

Q. And you had 2300 acres left? A. Approximately that.

Q. About how much would that run to the acre?

A. Well, the thick coal,—practically all of the leases were in thick coal and the coal ran from six feet to eight or nine feet. Now, taking a six-foot vein it would run 6000 tons per acre of workable coal, that is after allowing a certain percentage to be left in pillars to keep up the roof. We always counted about 1000 tons per foot per acre that we will obtain from the land.

Q. How much approximately does that make of total minable coal under all those properties?

A. Approximately about 18,000,000 tons.

Q. Now, taking up the leases, let us turn—take up first the lease in connection with Mammoth Vein No. 1; you are familiar with that lease? A. I am.

Q. Was that lease and the other leases which the company owned and which under the testimony were cancelled as a result of this destruction of property,—did those leases have a current market value?

Mr. Warrum: If the Court please, the defendants separately object to the form of the question and the evidence sought to be adduced thereby, because it is in the form of an assumption, and to the evidence because it undertakes to in-
2938 quire of this witness as to the value of leases, which is purely speculative.

The Court: I do not know what he is attempting to do. I presume this is simply a foundation question. Ask him if he knows whether they do or not. I presume that is the idea. The form of the question is objectionable and the objection is sustained.

Mr. Drinker: I will withdraw the question.

Q. Did the leases which were cancelled subsequent to the destruction of this property have a current market value?

A. I do not think that you could consider that they had a current market value, because in order to have a current market value there must have been some sales, and as all of the land in that country was held by the large concerns there was none bought or sold, so I do not think they would be considered to have a current market value.

Q. State what, in your opinion, taking first the lease-hold in connection with Mammoth Vein No. 1, to which you have referred heretofore, and state in your opinion what was the reasonable value of that lease as of the date of its cancellation?

Mr. Warrum: If the Court please, the defendants separately object to the witness testifying in answer to this question now propounded to him as to the value of the lease, because it involves speculation on the part of the witness.

The Court: The Court is of the opinion that it involves the further question,—that is, as I understand it with reference to Mines 3 and 4.

Mr. Drinker: No, Mammoth Vein No. 1, that is, the lease from the Cherokee Construction Company to the Mam-
2939 moth Vein No. 1 on the 360-acre tract.

By the Court:

Q. Mammoth Vein No. 1. Now, the buildings on Mammoth Vein No. 1 were situated on the property of the company, as I remember it?

A. The buildings and plant of Mammoth Vein No. 1 were located on lands owned in fee, but they had worked across on the lands owned by the Cherokee Construction Company.

The Court: I so understood it.

(Here counsel argue objection at length and finally the jury was excused from the Court room.)

* * * * * * * * * * *

The Court: I am very clear, gentlemen, that you cannot introduce as a measure of damages here testimony of the prof-

its that might have been realized by the mining of coal from the lands covered by these leases, not as a matter of profit.

Now, upon the other question, that question is objectionable, and the objection will have to be sustained, but I have concluded this, and I do this with some reluctance, that whether or not the loss of this lease was approximately caused by the destruction of this property is a question for the jury, as I said when you offered the evidence and the objection was made as to the value of the development that had been made upon those mines.

Now, having gone that far, if the jury find that the loss of the leases was proximately caused by the destruction of this property,—by this wrong, if they find a wrong was done—then to say that that lease has no value, or to say that that lease-hold for a period of years is dependent for its
2940 value upon the value of the work that has been done upon it, would be doing an injustice certainly. There must be some way, some means of getting at the value of that lease-hold. It is just as much property to own a lease-hold with the right to remove coal for a period of years, as to hold the title. Now, to say there was a wrong that was the proximate cause of an injury, and to admit that the injury was sustained, if you say that there must be a method of determining that injury. Now, I am convinced that that injury cannot be measured by the profits that is hoped, or was hoped would be made, or that the witness may attempt to demonstrate that he would have made by the mining of the coal. It is just as clear, however, that there must be a remedy and that there must be a proper measure of damages.

(Reads from authorities.)

I am convinced that there must be a measure of damages and that that damage must be controlled by what the jury finds in their judgment to be the reasonable damage from the testimony of those conversant with the situation there and who have had experience with that kind of land, and then judging this land by its development and the time that the lease had to run. Now, gentlemen, that in my judgment is the only measure of damages.

As to what the judgment of the witness is based upon, either party may analyze it just as fully as they care to, except it must be understood that the Court will not allow you to go far in elementary discussion of all of the means that would

lead up to his judgment. It must be based upon his
2941 knowledge of the land and his experience with lands of that character and based upon the conditions of this land as they have been developed.

2942 The Court: Bring in the jury.

(The jury here returned to the jury box.)

HEBER DENMAN, resumed on direct examination.

By Mr. Drinker:

The Court: What is the last question, Mr. Reporter?

Mr. Perkins: I think the last question, we have had lots of argument since then: "[—] Now state what in your opinion, taking the first leasehold in connection with Mammoth Vein No. 1 to which you have heretofore referred, state in your opinion what was the reasonable value of that lease as of the date of its cancellation."

A. Including the twenty,—

The Court: It does not appear here that there is any cancellation.

Mr. Drinker: I thought I had all of those decrees in, but I thought I would postpone putting in the decrees until we were through.

Q. Do you know the date when that lease was cancelled, Mammoth Vein No. 1?

A. I think in December, 1914, or January of 1915, along about that time.

The Court: Now, gentlemen, in connection with this question, and this objection, the court has determined first that the question of whether or not this leasehold was destroyed by this fire, that is, whether or not the fire or destruction of this property was the proximate cause of the destruction of the leasehold, is a question for the jury. If the jury finds that it was the proximate cause, then the question of the amount of damages isone that must be also found by them, and
2943 let the record show, in connection with this question and object, that the court finds that the record up to this time shows that property of this character is scarce in the locality where it is situated, in the state of Arkansas; that properties of the kind are held by large corporations, that there are no sales of such property, and therefore that the witness cannot testify to, nor can the market value of the property be shown, because there is no

market value. Taking the question in connection with the entire testimony of this witness with reference to this leased property, that he superintended its development as one of the owners of the leasehold, and opened and developed it in connection with the improvements on adjacent property owned by the witness and others; that he had knowledge of the coal that was developed on this leasehold property; that he knows the status of the development made by the plaintiffs, himself and others; that he knows the conditions under which the coal has been mined, and can be mined from his leasehold, in connection with the improvements on adjacent property; that he has been in the coal business, and knows and testifies not only as an owner but as an expert. It is ordered that the objection be, and it is overruled, and that the witness be allowed to state the value of that leasehold, what the reasonable value of that leasehold is, in his judgment.

Mr. Warrum: An exception follows under the rule?

The Court: Yes, sir.

Mr. Drinker: I find that I stated the wrong mine, I meant to ask him about Mine No. 6. May I substitute No. 6 in the question, or reframe the question?

2944 The Court: No, substitute it; don't reframe it.

Mr. Drinker: I am very sorry.

Q. Now, the lease to which I meant to question you, or to refer, was the lease in connection with mine,—used in connection with Mine No. 6, the original lease from the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company, dated July 10th, 1905, for the 360 acre tract, and the supplemental lease from the Cherokee Construction Company, successor to the American Smokeless Coal Mining Company, to the Mammoth Vein Coal Mining Company, dated June 19th, 1907. Do you have in mind the leases to which I have reference? A. No, you will have to repeat that.

Q. The lease to the 360 acre tract, the lease for Mammoth Vein No. 6, from the American Smokeless Coal Company and the Cherokee Construction Company, to the Mammoth Vein Coal Mining Company?

A. The original lease from the Bishops?

Q. No. Mark these for identification (handing the stenographer some documents).

A. Those are the leases for the Mammoth Vein No. 1, instead of No. 6.

Q. I was right the first time. Now, what in your opinion was the reasoanble value of those leases in July, 1914?

Mr. Warrum: Defendants separately renew their objection. I don't have to state it again?

The Court: Oh, no, the same ruling for the same reasons.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. In my opinion that leasehold was worth close to $200,000.00.

2945 Q. How close? A. $190,000.00 to $200,000.00.

Q. Now, what in your opinion was the value of that leasehold as of March 10th, 1915? A. March 10th, 1915.

Q. Yes, the first question was based on the value as of July, 1914, now, what in your opinion was the value of that leasehold as of March 10th, 1915?

Mr. Warrum: Defendants separately renew their same objection.

The Court: That is the date of the cancellation?

Mr. Drinker: Yes, sir.

The Court: Same ruling for the same reasons.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. The same amount.

The Court: Now, what leasehold is that?

Mr. Drinker: From the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company, dated the 10th of July, 1905, on what we call the 360 tract, and a supplement to it from the Cherokee Construction Company, successor of the American Smokeless Coal Company, to the same lessee, dated June 19th, 1907.

Q. Now, Mr. Denman, I hand you a paper marked plaintiffs' Exhibit 105, purporting to be a lease from the Cherokee Construction to the Prairie Creek Coal Mining Company, together with a paper marked plaintiffs' Exhibit 106, purporting to be a lease of the equipment turned over to the Prairie Creek Coal Mining Company by the Cherokee Construction Company, under the above lease, together with a paper marked plaintiffs' Exhibit 107, purporting to be the old lease from the Cherokee Construction to the Prairie Creek

2946 Coal Mining Company, for which the other one above referred to was substituted, and will ask you if those

were among the leases cancelled by the court under the circumstances which have been referred to? A. They are.

Q. Now, what mines were those leases appurtenant to?

A. Prairie Creek Nos. 3 and 4.

Q. What in your opinion was the reasonable value of those leases as of July, 1914?

Mr. Warrum: The defendants separately renew their same objection.

The Court: The same ruling for the same reasons.

To which ruling of the court the defendants, and each of them then and there duly excepted and still except.

A. About $225,000.00.

Q. And what in your opinion was the reasonable value of those leases, being plaintiffs' Exhibits 105, 106 and 107, as of March 10th, 1905? A. The same amount.

Q. 1915, I meant? A. March 10th, 1915?

Q. The same amount? A. The same amount.

Q. Now, Mr. Denman, I hand you papers marked plaintiffs' Exhibits 108, 109, 110, 111 and 112, purporting to be, 108 is the lease from T. W. F. Boone and wife to the Prairie Creek Coal Company, dated January the 14th, 1903; exhibits 110 and 111 being chain of title of that lease, purporting to be from Joseph M. Spradling, and 109 assignment of Joseph M. Spradling to the Sebastian County Coal Company, and Exhibit 112 purporting to be a lease or sub-lease of the Boone tract above referred to, by the ultimate assignee of the lessee, Sebastian County Coal Company, to Franklin Bache, and assignment by Franklin Bache to the Coronado Coal Company, and I will ask you whether these

2947 leases were among the leases that were cancelled by order of the court in connection with the circumstances we have been referring to? A. Yes, sir, they were.

Q. Now, what in your opinion was the reasonable value,—

The Court: Now, what properties do they represent?

Mr. Drinker: The Coronado; The Coronado was the only lessee that got an assignment.

The Court: I have you now.

Q. What in your opinion was the reasonable value of those leases as of July, 1914?

Mr. Warrum: The defendants separately renew their objection.

The Court: Same ruling for the same reason.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. What in your opinion was the reasonable value of those leases as of July, 1914?

A. To the ultimate lessee, to the Coronado Coal Company?

Q. To the Coronado Coal Company?

A. In my opinion that lease was worth $50,000.00.

Q. And what in your opinion was the reasonable value of that lease as of September, 1915?

A. The same value,—what? Please repeat your question?

Q. What in your opinion was the reasonable value of that lease as of September, 1915? A. Oh, the same value.

Q. Was there any change in its value between the two dates I have mentioned? A. No.

2948 Q. Mr. Denman, I hand you paper marked Exhibit 102, purporting to be a lease by the Midland Valley Railroad to Mammoth Vein Coal Company dated June 18, 1906, and I will ask you to which of the properties that lease appertains. A. That appertains to No. 6 mine.

Q. Of the Mammoth Vein Coal Company? A. Yes, sir.

Q. Now, was that one of the leases that was cancelled by order of the Court? A. It was.

Q. And what, in your opinion, was the reasonable value of that lease as of July 1914?

Mr. Warrum: The defendants separately renew all of their objections.

The Court: Same ruling, for the same reason.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. I could not attach any value to this lease-hold, except that it enabled the coal to be taken from the McKitchin lease, from the McKitchen heirs, it was a lease-hold that I considered valuable.

Q. I hand you a paper marked Plaintiffs Exhibit 103, purporting to be an agreement between the Cherokee Construction Company and Mammoth Vein Coal Company, and a paper marked Plaintiffs Exhibit 104, being a lease contract and agreement between Mrs. Belle McKitchin and others, and Missouri Coal Company, and ask you to examine them.

A. Yes, sir, I am familiar with them, I know all about them.

Q. Now, was the lease from McKitchin, et al to Missouri Coal Company assigned to anyone?
2949 A. It was assigned to the Mammoth Vein Coal Company.
Q. Was that assignment in writing?
A. No, it was not in writing.
Q. What was the Missouri Coal Company?
A. It was a company organized and obtained that lease.
Q. Who owned the stock?
A. The Mammoth Vein Coal Company.
Q. And the Mammoth Vein Coal Company operated under the McKitchin lease, did it? A. Yes, sir.

Q. Now, I will ask you to state,—first, were these leases Plaintiffs Exhibits 102 and 104, being the Cherokee Construction Company lease to the Mammoth Vein Coal Company, and the McKitchen estate to the Missouri Coal Company, were they among the leases that were cancelled by order of the Court?

A. The Cherokee Construction Company lease was canccelled by order of the court, and that took away the use of the mine, and we could not get the coal out from the McKitchen lease when the equipment and plant was lost.

Q. Explain that situation a little more in detail, so the Court and jury can understand.

A. The Mammoth Vein Coal Company leased from the Cherokee Construction Company, or the railroad company, No. 6 mine, including 160 acres of land. This land was largely exhausted, and so the Missouri Coal Company leased from the McKitchen heirs 152 acres of coal land, which was adjoining this plant, that we had leased from the Cherokee Construction Company. In order to take this coal from the McKitchen land, we obtained from the Cherokee Construction Company a permit to use their equipment and haul the coal from this adjacent land through their entries, and over their tracks, and use their equipment and tipple and
2950 so forth, and dump it on the railroad cars.

Q. Was that permit which you have mentioned the paper which was marked Plaintiffs Exhibit 103?

A. Yes, sir, that is it. Now, in consideration of that privilege, we paid them two cents a ton for the use of their equipment.

Q. Now, explain, what, if any, was the nature of the damage to you,—first, state what in your opinion was the reasonable value of that Cherokee Construction Company lease, under the circumstances in July 1914.

Mr. Warrum: Defendants separately renew their objection.

The Court: The same ruling, for the same reasons.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. Now, I do not consider that the Cherokee Construction lease was of value at all, except that it allowed us to take this coal from the adjacent land, but I did put a value on the McKitchen lease, which was lost by having no exit to the land which was lost by the loss of the Cherokee Construction Company lease, and its plant and equipment, and I place a value on the McKitchen lease.

Mr. Warrum: We renew the objection to the value, because the witness has said by his statement, that the value was placed on the McKitchen lease by reason of the Cherokee lease.

The Court: I think the Court will require the witness to distinguish the value upon the separate leases.

Q. State, Mr. Denman, in view of all the circumstances and rights incident to the possession of that Cherokee
2951 lease, what in your opinion was the reasonable value of that lease as of July, 1914.
A. The McKitchen lease?
Q. No, the Cherokee Construction lease, that was cancelled.

Mr. Warrum: The defendants separately renew their objection.

The Court: Same ruling, for the same reasons.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. I did not consider that it had any value, except as an exit.

The Court: Proceed.

Q. Was the McKitchen lease cancelled ?
A. No, it was lost through the cancellation of the other leases, it was dropped.
Q. Now, was the loss of the McKitchen lease to your company caused by the destruction of this property?
A. Yes, sir.

Mr. Warrum: Object to that as calling for the conclusion on the part of the witness.

The Court: I think it is; it is a conclusion. Objection sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. What, in your opinion, was the reasonable value, as of January, 1914, of the McKitchen lease?

Mr. Warrum: The defendants separately renew their objection.

The Court: Same ruling, same reason.

To which ruling of the Court, the defendants, and each
2952 of them, at the time duly excepted and still except.

Q. What in your opinion, was the reasonable value as of July, 1914, of the McKitchen lease?
A. In my opinion this lease was worth $20,000.00.
Q. And was there any difference in that value as of September, 1915? A. No.
Q. Or at any intermediate period?
A. No, there was no difference.
Q. Mr. Denman, in connection with—I hand you plaintiffs Exhibits 113, 114 and 115, and ask you whether those leases were cancelled by order of the court under the circumstances referred to?

Mr. Warrum: If the Court please, the defendants desire to object to that because the Court records are the best evidence of the cancellation of those leases.

The Court: He can only answer for the purpose of identification, until such time as the records are introduced; simply to identify the records with the lands in question; and that is the only purpose.

Q. Did you answer?
A. No, I didn't answer the question, please repeat that question.

(Question read by official stenographer.)

A. No, they were not cancelled.
Q. Was the lease belonging to the Sebastian Coal Company, was that cancelled? A. Yes, sir.
Q. What was that lease?
A. A lease that come directly from Mr. T. W. M. Boone, and different ones finally to the Sebastian County Coal Company.

The Court: This demonstrates the wisdom of having
2953 them identified.

Q. Was that one of the papers I showed you in connection with Coronado?

A. Yes, sir, you showed me that at first, that is one of the whole string of leases.

The Court: Withdraw those exhibits, and don't encumber the record with it, unless it is introduced for some other purpose.

Mr. Drinker: Just leave out the question about Exhibits 113, 14 and 15, they are withdrawn for the time being.

A. That is a lease that finally descended to the Sebastian County Coal Company.

Q. Now, when you gave your opinion heretofore in connection with the loss of the Coronado lease, did you include that Boone lease in your opinion? A. No.

Q. Your opinion was solely with reference to the value of the lease of the Sebastian County Coal Company to Mr. Bache, assigned to the Coronado Coal Company.

A. My answer was the value of the Coronado Coal Company, the ultimate [lesee,] but I did not include its value to the Sebastian County Coal Company.

Q. Now, was this lease from Boone to the Prairie Creek Coal Company, which was Plaintiffs Exhibit 109, which purports to have been assigned by Spradling, assignee, to Prairie Creek Coal Company, et al, and to Sebastian County Coal Company, was that one of the Boone leases that was cancelled by order of the Court? A. Yes, sir.

Q. What, in your opinion, was the reasonable value of that lease as of July, 1914?

Mr. Warrum: The defendants separately object for
2954 the same reasons, and for the further reason as I understood the witness to say,—I may be wrong, and I would like to ask a few preliminary questions.

The Court: You may, I don't know that I understand this myself.

Questions by Mr. Warrum:

Q. This was a Boone lease? A. Yes, sir

Q. And was granted to the Sebastian County Coal Company?

A. Yes, sir. The Boone lease descended through several different stages to the Sebastian County Coal Company, and

was sublet by the Sebastian County Coal Company to the Coronado Coal Company.

Q. And Mr. Drinker has asked you about a value on the lease as of July 1914, as it was held by the Coronodo Coal Company, and he is now asking you to put a value on it as held by the Sebastian County Coal Company?

A. It was leased to the Sebastian County Coal Company for five cents, and then they sub-let it at ten cents to this Coronado Coal Company.

Mr. Drinker: I handed him the two papers at once, and that is why I couldn't find the other one.

The Court: Proceed.

A (continuing.) In my opinion, that lease to the Sebastian County Coal Company was worth $15,000.00.

Q. Now, were there any leases,—what was the lease by the Hartford Coal Company of the 20-acre tract?

A. That was a part of that 360 acres that was sub-let originally to the Hoffman Coal Company, and descended to the Hartford Coal Company, the successor of the Hoffman Company.

2955 Q. Now, were those all the leases that were cancelled at that time?

A. Yes, sir.

Q. The ones to which we have referred?

A. Yes, sir.

Mr. Drinker: You may cross examine.

Mr. Warrum: Does the Court wish to run until 5:00 o'clock?

The Court: We might run over a little while.

Mr. Warrum: We would like to have time to run over this.

The Court: It is economy to hold court about so many hours a day, but when we get to a place where nothing can be accomplished, we had just as well stop. We will now stand adjourned until tomorrow morning at 9:30.

Thursday, November 8, 1917, 9:30 A. M.

2956 Pursuant to adjournment as last aforesaid, came all the parties as before on Thursday, November 8, 1917, at 9:30 o'clock A. M., and the trial of the case proceeded as follows:

Mr. Drinker: If the Court please, we have had here a great many operators around in this region who were called here for

the purpose of corroborating the testimony in regard to the value of there properties. These gentlemen are engaged directly in the production of coal and their business is being neglected by the fact of their being here for that purpose, and we think it is quite important that they should be allowed to testify promptly and get back to their business and as Mr. John P. White on the part of the defendants was allowed to testify out of order the other day I have thought that it would be proper to postpone the cross examination of Mr. Denman this morning in order to allow these gentlemen to testify and go home to their business.

The Court: That is a question for the defendants to determine as to whether or not they want to cross examine Mr. Denman at this time.

Mr. Covington: We do, your Honor.

The Court: It is entirely proper that the defendants be allowed to cross examine Mr. Denman now as he is the main witness on this very proposition. I presume that counsel for the defendants will want to go into the elements that constitute the value, which they have the privilege to do at this time, and the Court will not deny them that privilege even if it had the discretion to do so. Recall the witness.

2957 Mr. Drinker: I would like to ask Mr. Denman one more question.

The Court: Very well.

HEBER DENMAN, recalled as a witness in behalf of the plaintiffs, having been previously sworn testified further as follows:

Direct Examination (Con't.)

By Mr. Drinker:

Q. Mr. Denman, please point out to the Court and jury on this relief map here the location of the various mines which you have described and the location of the coal fields tributary to those mines and the relation of each one to the other.

The Court: That is, the coal fields tributary or the leased fields?

Mr. Drinker: The coal fields which they own or leased.

A. This map does not show all of the properties owned by this company, but only a portion of them. This is Prairie Creek No. 4 (indicating) and Prairie Creek No. 4 shaft. Here is the out-crop of the coal. It lies right along here, and out here is the strip pits, and down past the mine known as No. 7,

—the Dallas mine is not shown. It is out further to the southwest. This is shaft No. 4 (indicating.) There are 637 acres of that land lying around in here (indicating) and here is the coal dip. It dips to the north. This plane went up the shaft and the fan I spoke of stood right there (indicating) and here is a little strip mine.

By the Court:

Q. Is the top of that relief map to the north?

A. No, the bottom to the north. The coal dips to the
2958 northwest.

By Mr. Drinker:

Q. Proceed, Mr. Denman.

A. This plane came to the surface at this point called Goo Goo eyes and here is No. 3 camp and here is No. 3 slope with tipple, boiler and engine house, and the slope went down here to the main entry (indicating).

Q. Under the ground?

A. Yes, that is what we call the main west entry. That constitutes what is known as the Prairie Creek Coal Mining Company property. The land extended out a great deal further than shown on this relief map. Then we come to the southwest at this strip pit where the coal is at the surface. Here is Mammoth Vein No. 1. This is on the Midland Valley Railroad. This tipple here was on a spur of the Midland Valley Railroad. (Can't hear witness at this point.) Here is the boiler house right there (indicating) and here is the mine foreman house and here are the scales down on the railroad track. That land laid off to the north and northwest of this land here we leased, 360 acres,—it laid right along here (indicating).

Now, here is a tram-road, a three foot gauge track ran from this mine to the tipple on the Rock Island Railroad and come through this gap. Here is the tipple where we loaded on the Rock Island right there (indicating). In order to get the coal down we hauled it up there and dropped it on to there and down there was the boiler house (can't hear witness at this point).

Right along here was the land lying between the Hartford Coal Company and the Mammoth Vein Company and then we come to the land of the Hartford Coal Company all of which is not shown on this relief map. This property lies off in
2959 there and the 360 acres extends to the dip. (Can't hear witness at this point.)

Q. How far from there was the other mine of the Hartford Coal Company?

A. Between one-quarter and one-half of a mile, close to half a mile.
Q. Where was the Coronado?
A. The Coronado was about three miles from No. 4.
Q. Which way would that be off of the map?
A. It would be north and east, over in this direction (indicating).
Q. The Frisco tracks are not shown on this map?
A. No, sir.

Mr. Drinker: Mr. Denman, you may now resume the witness stand. (Witness resumes witness stand.)

The Court: Perhaps the Court should state gentlemen, before you start in to cross examine this witness, both to counsel and the jury that the testimony of this witness that was introduced with reference to what is known as advanced development, or what has been referred to as development on the different leased premises, where the witness gave the cost of such development, and the area of development, and the character of the development, the kind of the development and the extent of the development,—was evidence introduced by plaintiffs on the theory that that was one of the elements of his damage and the jury are informed that the Court is of the opinion that in the fixing of the value of these leased mines, as the witness was permitted to do by the Court for the unexpired term,—that the witness must necessarily have considered the mines in the condition that they were at the
2960 time of the destruction and therefore must have included necessarily in that valuation whatever development there was there and necessarily also the cost of such development. In other words, that the cost of this development is not a separate element of damage in this; the Court being of the opinion that the value of the unexpired lease is dependent upon the extent of the development for more reasons than one. Evidently that development confirms the judgment of the expert from the out-cropping of the coal as to the quantity of coal underlying. It exposes as he testified, the veins and demonstrates the thickness of the veins and the practicability of taking it from the mines, the necessary cost of mining, all of which elements must necessarily enter into the valuation of the lease for the unexpired term. And the jury are therefore instructed that while the Court is of the opinion that this was proper and competent evidence on the part of the plaintiffs to show the development of these mines and their condition at the time of the destruction of the property, the cost of such development together with the cost of the leases, $2400.00, as the Court remembers, for one lease per

year, is not an element of damage to be considered separately and independent of the value; that those elements merge into and became a part of the general appraisement of the valuation of that lease.

Mr. Warrum: The defendants severally except to the instruction given by the Court based upon the testimony of this witness as to the different items and the theory upon which the plaintiff introduces the evidence of this witness as to values.

The Court: The exception is allowed. I thought it was
2961 fair to state my theory before starting in with the cross examination of this witness. They cannot have both elements of damage.

Mr. Covington: I have called for the exhibits covering the Coronado and counsel has sent for them, I understand.

Mr. Drinker: Here they are.

Cross-Examination

By Mr. Covington:

Q. Mr. Denman, when did you begin operation on what you call the Coronado property, the lease from Mr. Boone?

A. In 1907.

Q. In 1907? A. Yes.

Q. Did you sink a shaft? A. Yes, we did.

Q. What is the depth of the shaft? A. About 130 feet.

Q. What are the dimensions? A. About 8x16.

Q. What amount of acreage does the Coronado property cover? That is where you sunk the shaft, what is the acreage connected with that particular mining property.

A. At the time the shaft was sunk there was 240 acres, but there was afterwards acquired 130 odd acres.

Q. 240 acres originally?

A. Yes, and 130 acres afterwards acquired or leased.

Q. From whom?

A. From the Arkansas Land & Mining Company, I think it is called. It is a sub-sidiary company of the Frisco Railroad.

Q. Was that adjacent to the Boone lease? A. Yes.

Q. What was the height of the coal in that particular mine?

A. The Coronado Mine?

Q. Yes, sir. A. The coal was about six feet thick.

2962 Q. Did you operate it continuously after you completed your shaft? Did you operate it continuously until it closed down on the 18th of April, 1914?

A. It was operated practically continuously.

Q. How many acres of the 240 were mined out when the mine ceased operation on the 18th of April, 1914?

A. I estimated that when that shaft was sunk there was 150 acres left in the solid not counting in pillars in the other mines. I mean 150 acres not touched at all, and then in addition to that there was a large amount of pillars up in the old mine adjacent to it.

Q. Were you a stockholder in that company?

A. No, I was not a stockholder in that company. I was a stockholder in the company that held the stock in that company.

Q. Which one of these companies owned the stock of that mine, or owned stock in the mine?

A. The Coronado Coal Company. The Coronado Coal Company was the operating company.

Q. I understand, but you say you owned stock in that mine through a corporation in which you held stock.

A. The Bache-Denman Coal Company.

Q. Did the Bache-Denman Company, what you call the holding company, take in all of the assets of those companies?

A. I do not understand that question.

Q. Is the Bache-Denman Company the holding company that took in the assests and money, if any was realized, on those properties?

A. Yes, it is the holding company.

Q. How much stock did it own in the Coronado?

A. I do not remember just the amount of the stock. It owned the majority of it, but just how much I cannot
2963 state.

Q. Colonel P. W. M. Boone, the original lessor of that property, owned stock in the r ne or was an officer in the company?

A. He owned stock, and my recollection is that at different times he was an officer.

Q. And he was the one that brought suit to forfeit the lease? A. That is my understanding.

Q. That suit was brought and judgment rendered in September, 1915, was it not?

A. I cannot fix the dates just when it was.

Q. You stated in your direct examination yesterday that you were unable to pay the royalty to the lessor by reason of the destruction of the property, therefore the lease was forfeited, is that correct?

A. I stated that the lease was forfeited. I do not think I state a reason, I stated the lease was forfeited.

Q. Was that the reason?
A. Yes, that was the reason.
Q. How much insurance did you realize upon the destruction of the property? I believe you stated yesterday, but I do not recall.
A. Fifty nine hundred and odd dollars.
Q. Fifty-nine hundred and odd dollars? A. Yes.
Q. Why didn't you take that insurance money and pay the royalty and preserve this lease?
A. Well, I don't know why that was not done. I was not in the management of the property at that time, and I am unable to answer that question.
Q. But they did get the money from the insurance company and did not pay the royalty as provided in this lease?
A. They received the money that I mentioned and
2964 did not pay the royalty.
Q. How many tons of coal in all has been taken from the Coronado property from the time you began operation until the mine closed down as I have stated?
A. Something over 500,000 tons.
Q. 500,000 tons?
A. There was a little over 500,000 tons.
Q. What was the price realized upon that coal per ton?
A. That is a pretty hard question to answer, Mr. Covington. I cannot answer that question right off.
Q. Can you approximate it and give us an idea?
A. Well, no, I suppose along about,—the average price from beginning to end was about $1.60.
Q. $1.60?
A. That is only an approximation. I do not vouch for the accuracy of that because I cannot answer those questions right off-hand from my memory.
Q. The development work that you referred to in the Coronado, referred to in your examination in chief, all sums paid for development work is included in the pay-roll, is it not? A. Yes.
Q. The pay-roll will show definitely the amount you paid for the development in that mine, won't it?
A. No, it won't show definitely. It shows the amount of yardage driven, but it does not state whether that is advanced development or development where the coal is being mined out. It does not differentiate between the different kinds of development.
Q. But it will show every dollar you paid for development?
A. Yes, it will show every dollar paid the miners for driving the entries and other work.

Q. Did you sell the coal of that mine f. o. b. cars at the mines, or did you ship it out?

2965 A. Both ways. Sometimes it was sold at a price f. o. b. the mines and sometimes at a delivered price. There was no fixed rule about it.

Q. Did you have during that period, say for three years prior to the trouble in 1914, a contract with the selling agency for the entire output of all the mines owned by you and Mr. Bache?

A. I do not think the contract with the selling agency included all of the coal. No, it included part of it. The contracts speak for themselves in regard to that matter. I do not know just what,—they did not have all of the coal through the agency.

Q. You did not make those contracts?

A. No, I did not make them. My work was more in connection with the mines than it was with the financial and selling end of the business.

Q. How many tons did you average as the yearly out-put of the Coronado mine?

A. Well, it ran up as high as 125,000 tons a year. It would run close to 100,000 tons a year, but at the time,—previous to the time it was closed down we were getting out between 500 and 600 tons a day, and it had run as high as 1100 tons for periods of time, that is from 1000 to 1100 tons a day.

Q. What did the original lease cost the company?

A. I do not know what was paid for the original lease. What they paid for it was obtained through, I think the American Smokeless, and I do not know what was paid for it.

Q. You do not know what was paid Mr. Boone for the original lease?

A. I do not think Mr. Boone had the original lease. I think it was made first to the old Prairie Creek Coal Company and then was taken over by the Smokeless Coal

2966 Company and that was absorbed by the Cherokee Construction Company, I think Mr. Bache obtained that lease from the American Smokeless.

Q. What did the 130 acre lease adjacent to the property cost you?

A. We did not pay anything in dollars and cents for it.

Q. You did not pay anything?

A. But the Fisco Railroad was getting part of the coal from the mines.

Q. In payment of the royalty?

A. Well, I suppose when they gave the lease they took that into consideration, that by fostering the out-put of coal from the mines along their line they would get to haul the coal and they would get to buy the coal for the use of their locomotives.

Q. Now, Mr. Denman, how was the Coronado proposition financed?

A. Well, it was financed on borrowed money. It started that way and then money was put in from different sources until it was properly built up.

2967 Q. Did the companies during all those years declare any dividends?

A. No, sir, they did not declare any dividends.

Q. What did you do with the proceeds of the sale of this 500,000 tons of coal those years?

A. We put it back in development of the mines and properties. All the money we took out of the mines went right back in the development and building up of the properties. Everything that came out of all of the mines for years.

Q. Do you mean to say that of the more than half a million tons of coal that you mined during those years, that all you realized from the sale of it was put into development of that mine on that 130 tract?

A. I cannot say that it went into that one mine.

Q. What mines did it go into?

A. I cannot say, but all the money that was taken out of the mines went into development of that mine or other mines; but in a coal mine, it takes a number of years to build a mine up to its capacity, and for years all of the money that came out of that mine went back into that mine; and if it did not go back into that mine, it went back into other mines of this group we have been talking about.

Q. How many years did you put the entire proceeds of that mine back into the development work?

A. I cannot answer that question.

Q. How many years had you been appropriating a part of the proceeds of some other corporations?

A. Up to the destruction of the property there had been no dividend declared, and all the money went into the properties.

Q. And it finally found its way into the company in

2968 which you and Mr. Bache owned the entire stock?

A. No.

Q. Name one company that got any part of it outside of the Bache-Denman Coal Company?

A. The Bache-Denman Coal Company never got anything.

Q. Didn't get anything?

A. No. The Bache-Denman Coal Company was the owner of all of them, as I have stated just previously, and instead of any money going in, the money went back into the properties to develop them, and put them on a paying basis; but as I have stated, it takes a number of years to build up coal properties.

Q. How many more years would it have required to have developed the Coronado property to such an extent that you feel it would have been a paying proposition?

A. I think that property was developed at that time, and had lots of entries driven, and the coal was easily accessible at the time that this occurred, that his destruction occurred.

Q. Did you ever have a board meeting of the Coronado Company during its entire existence, that was made of record?

A. Yes, sir, we used to have all the meetings required by the laws of the incorporations. We held our regular annual meetings, and whatever other meetings the law required we hold.

Q. Did you ever make a report of the financial standing to the state of Arkansas, or any other state?

A. We made all the reports that the law required.

Q. Did you make them? A. No, I didn't make them.

Q. Have you seen them?

A. I have seen them at different times, yes, sir.

Q. Where did you file them?

A. I suppose they were filed with the Secretary of State.

2969 Q. Were you the engineer for the Coronado for years?

A. For years I always held the capacity or position of engineer and superintendent. I was directly connected with the construction and development, and largely the operation, of the mines.

Q. Did you then at any time, during any of those years, file a map with the County Clerk of Sebastian County, of the Greenwood District, as the law requires, showing the working for Coronado?

A. Yes, sir, we did that every year, as the law requires.

Q. When did you file your last map?

A. I suppose some time previous to the destruction of the property, but the mine never developed after, and as nothing had been done in the mines at that time, it was not necessary to file further maps; but the maps were filed according to the law.

Q. You know that the law requires you to file them every year? A. Yes, sir, once a year in January.

Q. Did you do that? A. We did.

Q. And they are in the County Clerk's office now?

A. I suppose they are; they were filed.

Q. You speak of advance development; how far in advance of the mining of coal in Coronado were the entries driven when you closed down?

A. In regard to Coronado, I did not make any claim for advanced development; if you will recall my previous testimony. But there was a considerable amount of advanced development in the entries on the west dip. Now, as I did not make any claim for this, I did not get that down to feet, but I can state that there was quite a large amount of advanced development on this west side.

Q. What do you mean by large amount? You used
2970 the word "large"; now tell us the distance in yards or feet, or estimate it in some way, so we can understand about what advanced developments there were?

A. There was a space down there to turn 15 or 20 rooms, or where rooms had just been turned and not driven up. Now, of course, you know what room turning is. It had just started to turn off of the entry, but we had not worked the coal out of the room yet. Down there the rooms are driven about 250 feet, and there was space to turn the rooms out, or they had just been turned and not worked, for 20 rooms.

Q. Had you drawn any pillars? A. In Coronado?

Q. Yes. A. No, none of the pillars drawn.

Q. You were just beginning to draw the pillars, were you not, Mr. Denman?

A. Oh, no, we were not beginning to draw the pillars.

Q. You were not?

A. No, we had not started to draw the pillars.

Q. Mr. Denman, what amount of capital did you borrow to start Coronado?

A. I think $30,000.00 to start it, and then we borrowed a whole lot more before we got through.

Q. I believe you got the first $30,000.00 from Mr. T. J. Jackson, who is now President of the Kali Inla Coal Company, that figured in this? A. Yes, sir.

Q. You still owe that?

A. No, I don't think we do; I think it has been paid off.

Q. You gave him a bonus of $30,000.00 stock, did you, in addition?

A. I don't recall just how much bonus there was about it, but I think probably that he did have some bonus, but I can not state the amount of that.

Q. Give us an estimate now of how much money you
2971 borrowed to start that mine?

A. I said to start with we borrowed $30,000.00.

Q. How much more?

A. Oh, I suppose that there was borrowed enough to make up $50,000.00, but then in addition to that, we borrowed, all the profits of the mine went back into development of the mine.

Q. Yes, I understand that; and I want the amount of money you borrowed, in addition to the money from the coal that you mined?

A. In regard to those amounts, I am not so familiar with the finanical end, but I suppose it was enough to make up $50,000.00 altogether.

Q. Did you mine any coal on the 130 acre tract adjacent to the Boone lease?

A. No, sir; we never got to that.

Q. How far away from it were you?

A. We were right up close to it.

Q. Were you trying to get to it?

A. No, as I stated, we had never driven across the line. Up in the upper part we were right up to the line, but down in the lower part we were some distance away from it.

Q. You were not doing any mining at the time you closed down up next to this property at all, were you, you were driving in an opposite direction, were you? Driving away from the property?

A. No, we were at that time, or just previous to closing down the entries,—there were some entries going, not directly toward it, but leaning toward it, driving nearly parallel, not quite, but leaning toward the line; but the slope itself was not going at that time, on account of some dispute in regard to payment for yardage, but there were some entries going toward the line, but as I stated, they were not going to the nearest point toward the line, but we laid out the
2972 mine according to the entries, and drove them according to the plans, and these entries were leading toward the property; but there was a plane, not a plane, but a dip or slope, going right toward this land, and we had been held up for some time on account of a dispute as to the amount of yardage for driving it.

Q. And that was the only reason?

A. That was the only reason that that dip was not going.

Q. Now, in what year did you hoist 1100 tons a day at that time?

A. I think it was about the year 1911, or 1912; I think 1911.

Q. 1911? A. I think about that time.

Q. How many years now prior to that had you been hoisting that amount of coal from that shaft?

A. The mine had been building up right along, and started at nothing and had been increasing; and I think it was about the year 1911 it got up to that capacity.

Q. It had heached its highest capacity in 1911?

A. Yes, sir.

Q. Then if it had reached its highest capacity in 1911, all of the development work that you could have done subsequent to that, would not have increased the output, would it?

A. Yes, sir; because the development that had been done at first was on the upper end of the mine, above the shaft; and some of our entries had run up to the barrier pillar, or up to the lines, and then we started to develop the dips, going down grade, and we had not gotten across the land of the Frisco Railroad; and there was considerable acreage of the west dip to be developed.

Q. But as I understand you, you had reached the
2973 maximum capacity of the mine?

A. Oh, yes, the mine had reached its maximum capacity.

Q. You reached that three years before it was destroyed, you reached that in 1911? A. About that time, yes, sir.

Q. What amount of royalty were you paying on the property from the Frisco, that is, the 130 acre tract that you referred to? A. Eight cents a ton.

Q. What was the maximum?

A. I don't recall what the maximum was, it was not a very high maximum; the lease shows for itself in regard to that.

Q. The Boone lease was $1200.00 a year maximum, was it not? A. I think so.

Q. Now, at the time that you closed down, or at least the mine ceased to operate, in 1914, the spring of 1914, you owed $13,000.00 to Boone on royalties?

A. I cannot state the amount, but we owed him some amount.

Q. Can you approximate it?

A. No, I cannot approximate it because those matters you would have to refer to the books to get the exact amounts of all of those things. I knew they owed them something.

Q. What was the tonnage being made by that mine, what was the output daily of the mine in the spring of 1914, during the months of March and April?

A. March and April?

Q. Yes.

A. I can't say. When I left here the mine was producing between 500 and 600 tons a day.

Q. It had fallen off from 1100 tons to 500 or 600 tons a day?

A. Yes, sir; that is the reason I stated that these upper entries had run to the line, and we were just developing another part of the mine; we were developing the west side and dips.

Q. Is a dip entry more profitable to the operator than
2974 the other? A. No, sir.

Q. What is the difference?

A. Well, the difference is that now,—one way you are working up hill, and in dips you are working down hill, but at that mine the dips were not very steep, it was only a two or three degree pitch in that mine.

Q. At the time you closed down in April, 1914, closed down Coronado, how much royalty did you owe on this 130 acre tract?

A. I don't know that we owed any royalty on that; I don't think we owed any royalty on that 130 acre tract.

Q. Are there any faults in that property, what we call faults in that property? Have you had any trouble with that?

A. No, the mine as a whole is very free from faults. Of course, in some mines, like in all places, there may be some spar that would come in the coal, but not much.

Q. Have you had any squeeze in the mine, what we call a squeeze?

A. Yes, sir, in some old works on the east side of the mine there was a squeeze, and it came in, but that was all settled, and it had nothing to do with it. That had been all worked out, and had come down, and there was no damage done. The entries were left intact, that we were using.

Q. Mr. Denman, in addition to the money you borrowed and the money realized from the sale of the coal from 1906 to 1914, what amount did the Coronado owe when it closed down, to all sources?

A. I am unable,—I cannot answer that question, I don't know how much they did owe.

Q. Can you give us any idea?

A. No, sir, I cannot give you any idea; I am unable to answer the question.

Mr. Covington: Mr. Drinker, will you let me have the exhibits covering the Dallas mine?

Mr. Drinker: The Dallas mine?

2975 Mr. Covington: Yes, sir.

Mr. Drinker: Which one?

Mr. Covington: The one that you referred to yesterday.

Mr. Drinker: Is there a lease of the Dallas mine we had yesterday?

The Witness: No, the Dallas mine was on land owned in fee.

By Mr. Covington:

Q. You say you sustained some damage to what is known as the Dallas mine? A. Yes, sir.

Q. On what tract of land is the Dallas mine located?

A. On land owned by the Hartford Coal Company.

Q. Is the land referred to as the Hoffman mine, is that on the same land?

A. It is on the same tract of land; is it on land owned by the Hartford Coal Company, about a half mile apart.

Q. But the Dallas mine, was it in operation on July 17th, 1914? A. No, sir.

Q. How long prior to that?

A. Something like two years.

Q. It had not produced any coal then in a year?

A. It had not produced any coal in the period I speak of.

Q. Is it not a fact that it had been closed down for two years, Mr. Denman?

A. That is what I stated, that it had been closed down about two years.

Q. I didn't understand you. Who operated it last?

A. I don't recall now. I think that that had been leased out, and I have forgotten to whom that was leased, when it was operated last; and I am not, I cannot say for certain who it was last operated by.

Q. Did a man by the name of McCarty operate it, and
2976 someone else? A. He operated it at one time.

Q. He was the last one that operated it?

A. I am under the impression that he was the last one that operated it.

A. He was the one that took the money and proceeds of the coal and left $5,000.00 or $6,000.00 due the miners there, did he?

A. I don't think there was anything like that amount, but I know that he took the proceeds and skipped out, and left without paying the miners, but I don't think it was anything

like as large as that, I think it was something less than $2,000.00.

Q. How many acres was in this particular tract?

A. Well, the Hartford Coal Company owned 280 acres in fee.

Q. 208 acres in fee? A. 280 acres.

2977 Q. And this mine was located on that tract?

A. Yes, sir.

Q. Was all the 280 acres underlaid with coal?

A. No, not all of it.

Q. How many acres had you mined out?

A. About 60 acres mined out with the two mines.

Q. When did you or any of your companies, the company in which you held stock, when did you cease to operate the Dallas Mine?

A. I cannot state just when we did, but we operated it at different times, and it was operated by two or three different lessees.

Q. You stated on yesterday that you were preparing to open up and operate that mine. Now, what preparation had you made?

A. No, I didn't state that, that we were preparing, but I stated that we could operate it that there was sufficient market to take all of the coal that all the mines we owned could produce, but on account of the market not absorbing more coal than what we could get in other mines, that that mine had been left to lay idle, until some time that someone wanted to lease it. We had leased it to two or three different lessees.

Q. Now, when did you conclude to open up that mine? when did you arrive at the conclusion that you would in the future open up the mine?

A. I didn't say that we had arrived at that conclusion.

Q. You had no idea of anything about it?

A. If you remember what I said, I said that whenever there was a market to take all the coal that we would open up that mine, and operate it; it didn't take very much water and all we had to do was pump out what little water there was in it and start it, and we could do that at any time.

2978 Q. Did you have that in mind in the spring of 1914?

A. We had that in mind all the time, that there was a land that we could open up and market.

Q. Each of your mines had a contract with the McAlester Fuel Company to take every pound of coal that you produced?

A. No, sir.

Q. They did not? A. No, sir.

Q. Have you a copy of the contract in your pocket?

A. I know that the McAlester Fuel Company didn't make any such contract with any of the big companies, to take every pound that they could produce.

Q. Have you a copy of your contract?

A. No, sir, I have not.

Q. Have you ever seen one of them?

A. Yes, sir, and I am sure there was no such contract ever made with the McAlester Fuel Company, to take every pound of coal that any large mine could produce.

Q., This was a small mine; did you have any contract with them with reference to that at all?

A. I didn't say it was a small mine, I think it was a pretty good sized mine; it had a capacity of 300 tons a day.

Q. That is small compared with some of the mines?

A. That's a pretty good averaged size mine, it was not as good as some of them.

Q. Now the Hoffman mine, was that located on the same tract? A. Yes, sir.

A. Yes, sir.

Q. How far from the Dallas proposition?

A. About a half a mile.

Q. I believe you stated that the end of the tipple burned of the Dallas Mine? A. Yes, sir.

2979 Q. How much of it burned?

A. It burned off the end of it, and the rock trestle, and the engine house.

Q. And the engine house? A. Yes, sir.

Q. And the boilers were still there?

A. They were there but they were dynamited.

Q. Where were they dynamited?

A. Well, in the end of the boiler; evidently the stick of dynamite was put in the end of a flue and sheared off the ends of the flue, and bulged out the boiler.

Q. Did it burst the pipes?

A. If you call the tubes pipes, it bursted the boiler tubes.

Q. Will you explain to the jury how they can put dynamite in a boiler and not burst the tubes?

A. I said it did burst the tubes, and sheared off the ends of the tubes. I can explain to the jury how it can be done, do you want me to explain to the jury?

Q. Yes, I want to know.

A. If you gentlemen know how a return tubular boiler is, there is at the front end some big doors that open up, and when you open up that door, you can see the end of all of those boiler tubes, and when you open up that door, that exposes the side of the boiler, and all you would have to do is to

stick a stick of dynamite in those tubes, and when that explosion occurred it would shear the ends off all of those boiler tubes,—I don't say all of them, but most of them, and at the same time, it blew out the flue sheet, or front of the boiler. It practically ruined that boiler. It left the back end of the boiler with the tubes sticking to the back end, but all the tubes were sheared off of the front end.

Q. Did the shearing off the ends of it, it didn't affect
2980 the tubes any?

A. No, you misquote me, I said it did shear them off.

Q. I didn't intend to, Mr. Denman. I am trying to understand how it was possible to shear off the flues without affecting the tubes.

A. It did affect them, it tore them loose. You know how a boiler tube is riveted into the sheets, it is swelled in at the end, and when this explosion occurred, it tore them right off, and lifted them out from the sheet where they were riveted in or expanded in, they use an expander, and they are expanded into this sheet.

Q. So that, and the burning of the tipple engine house, that is the boiler house, and the tipple, that was all the damage that was done there.

A. The explosion of the boiler and the burning of the engine house, and the damage to material in the engine house, the machinery and piping and so forth, and the burning of the end of the tipple and of the rock trestle.

Q. What was there about the rock crusher to burn?

A. I said the rock trestle.

Q. Now, what did you say the tipple was damaged?

A. I said it was damaged $300.00.

Q. You had a fire there in some slack coal within a short time before, that had been burning for a good length of time?

A. There was not much slack around that mine, but there is always some slack around every mine, but I don't recall of any slack pile burning there.

Q. When was the last time that you were at this mine before? A. I went back there in June 1914.

Q. June 1914? A. Yes, sir.

2981 Q. Were you over there taking an invoice of the property you testified to here yesterday?

A. I didn't take any invoice of the property; I drove around, but I didn't take any invoice of the property.

Q. What were you doing?

A. I was interested in the property, and had lived down there for about ten or twelve years, I was naturally interested in it.

Q. Did you go over there and take a list of the property?
A. No, I didn't take a list.
Q. When did you take a list?
A. I have taken a good many lists at different times.
Q. When was the last time that you took an inventory of the property at the Dallas mine?
A. The last time was in the early part of 1915, with Mr. Williams; we took an inventory for the receiver, and I went with him when he took that inventory for the receiver.
Q. Now, the Hoffman mine. Was it in operation?
A. It had been in operation right along, up to nearly the end of 1914.
Q. Who was operating it?
A. The Central Coal & Coke Company.
Q. Under a lease from the Hartford Coal Company?
A. Yes, sir.
Q. Did they operate the entire year of 1914?
A. I think so.
Q. Work all the time, did it?
A. No, I don't think they worked all the time, but part of the time.
Q. Practically all the time?
A. I think they worked a large part of the time.
Q. Mr. Denman, they did work up until the expiration
2982 of the lease, and you refused to extend the lease so they pulled their irons and took away the property which they had there, the Central Coal & Coke Company?
A. What is the question you wish me to answer?
Q. Didn't the Central Coal & Coke Company operate the Hoffman mine? A. Yes, sir.
Q. Up until along after the trouble in July, until the expiration of their lease, and you refused to extend the lease for them, and they pulled their irons out of the mine, and took their property that they had there and carried it away?
A. They took away part of their property, they took out some of the steel.
Q. All except what you refused to give up? A. Yes, sir.
Q. There was not a thing wrong about that property, was there? A. No.
Q. It was intact, was it? A. There was nothing wrong.
Q. Still standing there today?
A. Yes, sir, part of it is.
Q. Have you made any effort to operate it?
A. No, there has been no effort made to operate it. Well, there was to for a time in 1915, for about six weeks, or some such length of time it was operated.

Q. In 1915? A. Yes, sir.
Q. Who by, what company or persons?
A. The Hartford Coal Company.
Q. The Hartford Coal Company? A. Yes, sir.
Q. Then there was no damage to that property?
A. Not due—there was no physical damage done to the property through destruction.
Q. Now, then, is there any other damage?
A. Yes, sir, there is another damage.
2983 Q. What is the damage?
A. There was a plant and equipment there, and part of the land that this mine was to operate was taken away, and the value of the equipment and development altogether was depreciated to a certain extent by taking away the lands that this mine was to work.
Q. What lands now were taken away?
A. The Cherokee Construction Company land?
Q. The Cherokee Construction Company land?
A. Yes, sir.
Q. Was that particular property covered by the general lease of the Prairie Creek Coal Mining Company, or the Mammoth Vein Coal Company, which?
A. That was,—360 acres was leased to the Mammoth Vein Coal Mining Company.
Q. Mammoth Vein Coal Mining Company?
A. Yes, sir.
Q. Now, that is the hundred dollar corporation that was operating at No. 4, on the 17?
A. Yes, sir, that is the hundred dollar corporation.
Q. And that had the lease to this 360 acres?
A. Yes, sir.
Q. And you say the taking away of that lease damaged you? A. Yes, sir.
Q. How Much? A. About $12,000.00.
Q. $12,000.00? A. Yes, sir.
Q. Now, you had an option to release that, and let it continue to operate, to the Central Coal & Coke Company, and you refused to do it?
A. Mr. Bache refused to renew the lease.
Q. Yes, sir, you refused to lease it? A. Yes, sir.
Q. Then you voluntarily stopped the operation of the mine so that you could pay the royalty on that?
A. No, we didn't voluntarily stop the operation of the mine.
2984 Q. You did not? A. No.
Q. Did you involuntarily stop?
A. It was stopped.

Q. Well, can you tell us why you refused to permit the Central Coal & Coke Company to continue to operate the mines, when they wanted to?

A. I can give a good reason for doing it.

Q. Let us have it.

A. Because we thought we could make more money by later on operating it ourselves.

Q. You intended to operate it yourself?

A. At a later date, yes, sir, as soon as we could.

Q. When were you going to begin operation of this particular mine?

A. That was very indefinite there, conditions existed,—

Q. (Interrupting.) Were you behind on the royalties on this 360 acres?

A. I cannot state those questions,—just as I say, I had more to do with the mines. I think probably they may have been some behind,—no, I don't think they were any behind with the royalties on that particular lease.

Q. That particular lease?

A. No, I don't think so.

Q. And when was the next royalty due?

A. I cannot speak off-hand, but lease would speak for themselves, they give the dates when the royalties were due.

Q. Then, with a view of operating the mine yourself, you refused to extend the lease to the Central Coal & Coke Company.

A. Mr. Bache refused to extend the lease to the Central Coal & Coke Company.

Q. Mr. Bache did? A. Yes, sir.

Q. Did the Hartford Coal Company have any lease on this property?

A. Why, the Hartford Coal Company owned all the
2985 land, and owned the mine, and whenever this lease terminated everything reverted to the Hartford Coal Company.

Q. The Mammoth Vein Coal Mining Company owned the lease on the 360 acres?

A. The Mammoth Vein Coal Mining Company owned the lease-hold.

Q. Now, how did the Hartford suffer any damage, if this belonged to a separate and distinct corporation, this lease. Tell me how it suffered damages.

A. It suffered damages in this way, because these companies were all owned by one company, and the intention was to take coal out of the mine that was most convenient and cheapest to take it out of.

Q. Just answer my question, there are several distinct corporations? A. Yes, sir.

Q. The Hartford did not own one cent in that lease, did did it, that belong to the Mammoth Vein Coal Mining Company. A. It did.

Q. How could the Hartford be damaged if it had no interest in it?

A. It could be damaged this way, that all those companies practically,—the stock was held by the Bache-Denman Coal Company, and it was the intention to sub-let certain portions of the land, so as to take the coal out of the mine that was most convenient. These mines were all ours, or practically ours, and we could take the coal out of the mine that was most convenient to take it from, and the cheapest to operate.

Q. That being true, why did you juggle them all up together that way, so that you could just change dollars around and around? Why did you not have just one company?

A. We put the dollars where they were most needed to operate these properties and develop them.

2986 Q. And the least accessible to creditors?

A. The least accessible,—oh, no, no, no. We used the money where it was needed to develop the properties.

Q. Did you use any funds on this 360 acres at all?

A. Yes, sir, we had used some funds on this 360 acres.

Q. Where?

A. In developing the Mammoth Vein Slope, and driving it down on this 360 acres, and driving those entries.

Q. But the Mammoth Vein Coal Company did that?

A. Yes, sir, the Mammoth Vein Coal Company did that.

Q. Your idea of the damage done to the Hartford Coal Company was that it might sometime get part of the money that the Mammoth Vein Coal Campany realized from this 360 acres, is that your idea?

A. No, that is not my idea at all.

Q. How could they participate in the profits arising from that 360 acres at that time?

A. Because they were operating as one company. They were operated so that we could take the coal from this lease through the Hoffman Coal Company,—not through the Hoffmon Coal Company, but through the Hoffman Mine, and the Hartford Coal Company would participate in any advantages that were derived from taking the coal out in this way.

Q. Did you have a contract to that effect with the Hartford Coal Company?

A. No, we didn't have any contract, no contract was necessary.

Q. Whatever you said was the will of all of the corporations, you and Mr. Bache was it?

A. What we decided to do in regard to these different corporations was done.

Q. You didn't consult anybody else at all, you didn't
2987 call any board meetings, or anything of that kind, you just met and agreed to a certain thing and went ahead and did it?

A. We were the managers of most of the properties, and owned most of the stock in them, and we had the right.

Q. The minority stock holders didn't have any rights at all, you didn't consult them at all?

A. They never filed any objections, but I think they were consulted.

Q. Now, Mr. Denman, what was the royalty on the 360 acres, if you remember?

A. Eight cents a ton, or $2400.00 a year.

Q. Eight cents a ton or $2400.00 a year.

A. That was the maximum royalty of $2400.00 a year.

Q. Did you have any insurance on the Dallas tipple?

A. I don't know whether there was any insurance on the Dallas tipple at the time of the destruction. Previous to this time, when I left here, we had insurance on the Dallas tipple, but I don't know about whether there was at this time, or the time of the destruction.

Q. Now, to go down to No. 4. The Prairie Creek Coal Mining Company owned the lease on the land adjacent to No. 4, and the property on which the shaft was located, did it?

A. It had a lease on all the land, and shaft and equipment and houses and everything pertaining to the property.

Q. And it transferred that lease, or assigned it, to the Mammoth Vein Coal Mining Company, the hundred dollar corporation. A. Yes, sir.

Q. When? A. I don't know.

Q. Were you in the state when that was done?

A. I don't recall whether I was or not. I left here and was away for part of 1914, and I can't state.

2988 Q. Did the lease provide 17-½ cents royalty on a ton, did it, Mr. Denman?

A. The Royalty was 17-½ cents a ton.

Q. How many acres did you take in that particular tract?

A. 687.

Q. 687? A. Yes, sir.

Q. How many acres of coal did the Prairie Creek Coal Mining Company mine from this particular tract of land during the entire period that it was operating Plant No. 4?

A. In order to state that, I would have to refresh my memory, and look up, I cannot answer just how many tons that mine took out. I estimated that there was worked out from that property, including the time it was worked previous to being taken over by the Prairie Creek Coal Mining Company, I estimated there was about eighty acres worked out.

Q. Eighty acres? A. Yes, sir.

Q. That included what you called the Greer tract of land, on which the shaft was located, that eighty acres?

A. That includes all the coal worked out from that land.

Q. Can you give us an estimate [abbout] how much of this was mined out when you took it over?

A. There was not very much worked out by No. 4, but some by No. 3, about 20 acres.

Q. And that coal was about nine feet high?

A. No, I didn't state it was nine feet high. I said it averaged about seven feet high. I stated in Mammoth Vein No. 1 there were places it run nine feet high.

Q. But the average in No. 4 on the eighty that had been mined, was about seven feet? A. About seven feet.

Q. How many tons per acre would that amount to, Mr. Denman?

2989 A. Well, on land, an acre of land underlaid with coal a foot thick, means, or will contain between seventeen and eighteen hundred tons per foot per acre, but we only count on mining from fifty to sixty per cent of the coal, leaving that balance of the land for pillars; and we always take 1000 ton per foot per acre. Now, if you had a vein six feet thick, we count on getting out 600 tons per acre, which is a very conservation estimate of the amount of coal that you would get out. Most places they get out really more than that.

Q. 6000 tons per acre?

A. 6000 tons per acre, yes, sir.

Q. Have you any idea of about the number of tons that you mined from that tract?

A. No, more than I stated, I figured out how many acres had been mined out. You see the operation of the mine goes back a number of years, and unless you refer to figures, it is not very often you can remember just how many tons you have taken out, during years of operation. Our records will show that.

Q. What I am trying to get at is the number of tons that the Prairie Creek Coal Mining Company has mined out of this tract of land, after you took possession of it until the time you closed down.

A. The records will show that, I cannot state it from memory.

Q. Approximately,—you are the engineer in charge there, can't you approximate it?

A. Well, it operated from about 1907,—well, I don't—when I state this figure, I state that it is only an approximation from memory, but I would imagine about 300,000 tons; it may be considerably more or considerably less. As I stated, the only way to get that accurately is to go the records, and look it up.

2990 Q. Now, did you appropriate all the proceeds from the sale of this 300,000 tons, to the development in the mine, put it back into that particular mine?

A. Yes, sir, we appropriated that and a whole lot more.

Q. About how much more?

A. Well, over a hundred thousand dollars.

Q. Did you borrow that money? A. Yes, sir.

Q. From what company, or corporations?

A. Well, that was borrowed from a number of different sources; part of it was borrowed from the Kali-Inla Coal Company, and a number of different sources.

Q. You testified with reference to driving entries; the great cost of driving an entry. How wide is that entry in No. 4?

A. Oh, about ten feet; they run about ten feet.

Q. About ten feet? A. Yes, sir.

Q. Do you have to take the coal, out of that ten feet, don't you? A. Yes, sir.

Q. You drive it through that seven feet of coal, don't you, or you did do that? A. Yes, sir.

Q. Now then, in driving a yard, seven feet high, it would be practically seven tons of coal that you would get out of that yard in development work, would it?

A. Let's see; seven feet, yes, sir. There would be that much.

Q. You get $1.60 a ton for it?

A. That would be somewhere near the average price that was received in years past.

Q. Therefore, each yard of the entry work driven, you got $11.20, for the coal, didn't you?

A. I think your multiplication is correct, or somewhere near it.

Q. How much do you pay the coal digger for driving that yard?

2991 A. We pay the coal digger, or did at that time I think it was $2.49 a yard, but in addition to paying that a yard, we also pay for the coal, and the drivers, for hauling that out, and all the men at the shaft bottom for caging it, and track layers, and fire bosses, and superintendents, and all of the miscellaneous things. In driving narrow work, if you get enough back from the coal to pay the miner what you pay him for the coal, you are doing well, and usually the yardage is dead expense.

Q. You don't charge up to entry work the salaries of the president and vice-president and secretary and treasurer and all that do you?

A. Oh, yes, we do.

Q. You charge that up to entry work?

A. We charge it to operation of the mine.

Q. But the operation of the mine consists of something besides driving entries?

A. It consists of all the operation of a coal mine, we charge up everything.

Q. How much a ton did you pay the coal digger for driving this entry?

A. I think the price at that time was 68 cents.

Q. 68 cents a ton? A. Yes, sir.

Q. And gave him $2.25 extra on the day to do that work?

A. No, I didn't state that.

Q. On the yard?

A. I said $2.49 was the yardage price, with all of those trimmings that go with it, such as water yardage, and if draw slate comes down you have to pay for that, and a lot of other things that come in that, and all those day men and the material that goes in, the steel rails and ties, and props, and supplies, [to] numerous to mention, and all the different hands, that all goes into the cost of that.

2992 Q. I understand that goes into the cost of the operation of the mine.

A. Yes, sir, and into the cost of the operation of the entry.

Q. I am trying to get at the cost of driving this narrow work that you say is so expensive. I want to see how much it has been costing you. You pay the miner 68 cents a ton?

A. Yes, sir, that is my answer.

Q. And you give him $2.25 extra on the yard to do this?

A. No, I said $2.49.

Q. $2.49? A. Yes, sir.

Q. In a seven foot vein of coal, it would cost you $7.15 and you would get $11.20 for it?

A. If you only figure that part of it, but you only take a part of it. All these other operations, these day men,—figured the way you do, if you could figure the cost of coal just what you pay the digger, the operator would get rich in a short time, but there is a whole lot more to the operation of a coal mine than just paying the miner for digging coal. All the day hands must be paid, and the supplies, and the clerks and overhead, and that is all partially charged to the development of these entries.

Q. Can you approximate the amount of money outside of the sums realized from the sale of coal mined from this particular tract, 80 acre tract No. 4, that you borrowed and put into the mine to carry out the development?

A. I had approximated it, when I said something over $100,000.00.

Q. Something over $100,000.00? A. Yes, sir.

Q. That was in what years?

A. That was scattered over all the years that the mine was operated.

Q. Can you approximate the years.

A. I said about seven years.

2993 Q. Mr. Denman, did the Prairie Creek Coal Mining Company ever declare a dividend?

A. No, sir, it never did.

Q. Did the Hartford Coal Company ever declare a dividend?

A. No.

Q. Did the Mammoth Vein Coal Company ever declare a dividend?

A. No, it never did.

Q. Did the Mammoth Vein Coal Mining Company, the hundred dollar corporation, did they ever declare a dividend?

A. No.

Q. Did the Sebastian County Coal Company ever declare a dividend?

A. No.

Q. Did the Bache-Denmann ever declare a dividend?

A. No.

Q. What sum did you pay the Cherokee Company for the lease of the property at No. 4? A. I don't know.

Q. You don't know what you gave for that lease?

A. I don't think that there was anything given in dollars and cents for that lease.

Q. Did you give anything else?

A. Yes, sir, just like on the Frisco, the railroad always wants to develop and operate the properties on their line, and get the freight haul, and the chances to get coal cheap.

Q. In your estimate on yesterday on the value of the property belonging to the Cherokee Construction Company at No. 4 and 5, and the Mammoth Vein, you estimated that at $10,000.00?

A. Please repeat that question, I lost track of it.

Q. The property belonging to the Cherokee Construction Company that the Prairie Creek Coal Mining Company took over with the lease, and leased from them at the time?

A. Yes, sir.

2994 Q. You estimated that to be about $10,000.00.

A. No, I didn't estimate that to be $10,000.00, I estimated the damage to that, to its destruction, amounted to about $10,000.00

Q. Now then, what was the value of the property of the Cherokee Construction Company before the fire?

A. Well, it would be hard to state off-hand, just what the value of the entire property was. I made an estimate of the amount that was destroyed.

Mr. Covington: I ask that this paper be marked as an exhibit.

(Paper referred to was marked for identification, Defendants Exhibit No. 15.)

Q. Mr. Denman, I hand you Defendants Exhibit 15, and will ask you to examine it and state if that is a copy of a list of the property that you took over? That is, the Prairie Creek Coal Mining Company took over from the Cherokee Construction Company at the time the lease was made.

A. Yes, sir, that was the inventory taken by Mr. Gallagher and Mr. Hoye.

Q. What Hoye, Jim Hoye?

A. Yes, sir, Jim, James P. Hoye.

Q. Is this property that you referred to when you estimated the damage to it was $10,000.00? A. Yes, sir.

Q. Now who owned the other property located at No. 4?

A. The Prairie Creek Coal Mining Company.

Q. How much of that property belonged to the Kali-Inla Company?

A. There was a considerable portion of that property that belonged to the Kali-Inla Coal Company that had been leased to the Prairie Creek Coal Mining Company, or the Prairie

Creek Coal Mining Company was responsible to the Kali-Inla Company for the safe return of the machinery.

2995 Q. Well, is it not a fact, that the Kali-Inla Coal Company owned all the property there except two boilers, outside of what the Cherokee Construction Company owned?

A. No, that is not so.

Q. Now name something that the Prairie Creek Coal Mining Company owned there?

A. The Kali-Inla Coal Company only owned certain machinery, it didn't own the labor that was necessary to put in the foundation, and install this machinery; it only owned the bare machinery.

Q. Now, that is what I am trying to get at now. Name the machinery that belonged to the Kali-Inla Coal Company.

A. That did belong to the Kali-Inla Coal Company?

Q. That does now, and did at the time of this fire on the 17th of July, 1914.

A. I cannot name off-hand, I can refer to my list, and dig out the items, but there was a considerable part of the machinery itself, not the cost of installation, but just the machinery itself, that was owned by the Kali-Inla Coal Company, but there was portions owned by the Prairie Creek Coal Mining Company. Now the tipple for instance. We built a tipple that cost $14,000.00. Now, the tipple was not owned by the Kali-Inla Coal Mining Company.

Q. That is a part of your contract, to keep that tipple in repair, was it, Mr. Denman, with the Cherokee Construction Company?

A. Not in repair. That was not a repair. That was a new tipple. It was built in 1913.

Q. They gave you the money to build it with.

A. No, they didn't give us the money to build it.

2996 Q. Didn't you say yesterday that there was over $7,000.00, about $8,000.00 that you got from insurance when it was destroyed before?

A. What I did say was that that tipple cost $14,000.00, and we had received $7,400.00 insurance money, and that leaves a difference of $6,600.00.

2997 Q. Mr. Denman, at the time the Prairie Creek Coal Mining Company took hold of this property, from the Cherokee Construction Company, No. 4, the mine was then equipped and in operation, ready for operation?

A. It was equipped in a poor sort of way. It was not completely equipped. It had considerable small machinery and the mine was not developed.

For instance, when we went there, there were about 44 workable rooms in No. 3 and No. 4 together, and when we last operated it, there were 181 workable rooms.

Taking up the Goo Goo Eyes plant, there was a small engine up there and we put a larger engine there, and a great many things, pumps were renewed, and new pumps put in, and a great deal of work done. There was some equipment there.

Q. Then in what year was the tipple burned?

A. It was about the first of the year 1913, or the last of 1912. I cannot remember just the date it was burned, but it was rebuilt in 1913.

Q. Then you had been operating with that poorly equipped tipple for ten years, had you?

A. No, we had done a great deal of work on that tipple previous to that. We had changed it and done a great deal of work previous to that time, but that was not the only thing we did with that tipple. We put in a new water supply system and a great many other things. That tipple was only one item.

Q. It had burned down in 1912 or 1913?

A. Either the end of 1912 or the first of 1913, I don't remember just the date, but it was rebuilt in 1913.

Q. And the insurance collected on it, did you use that in erecting the other tipple?

A. There was some insurance collected on that, and it was used,—it was allowed to be used in helping to erect the
2998 new tipple.

Q. You had some trouble with the Cherokee Construction Company about the erection of that second tipple, did you not?

A. No, there was no trouble about it. I have no knowledge of any trouble at all in regard to the erection of the new tipple.

Q. Now, going back to Mammoth Vein, how long before the 17th of July, 1914, had it been since that mine was in operation?

A. It had been in operation in 1913, and I think for a short time in 1914.

Q. You referred to some property at that time, I believe, in your examination-in-chief yesterday, as belonging to the Cherokee Construction Company?

A. No; the only thing I referred to was the leasehold of that mine and the development, the advance development on this leasehold.

Q. That was the 360 acre tract, was it not? A. Yes.

Q. That you referred to? A. Yes.

Q. What property at that particular mine belonged to the Cherokee Construction Company?

A. There was none of it.
Q. Did any of it belong to the Kali Inla?
A. There was some machinery that belonged to the Kali Inla Coal Company.
Q. Mr. Denman, was there anything with the Mammoth Vein Coal Company that belonged to it, the Mammoth Vein Coal Company?
A. Practically all of it belonged to the Mammoth Vein Coal Company, and then it was responsible for the return of this machinery that belonged to the Kali Inla Coal Company.
Q. I will ask you if you were not paying rent on every piece of machinery, with the exception of one or two pieces, to the Kali Inla Coal Company, and they are now suing you for that royalty on the other side of the docket in this
2999 court?
A. I don't know anything about that.
Q. I mean the rent?
A. The Kali Inla Company probably owned about one-fifth of the valuation of the plant. They owned a certain amount of machinery there, but they did not own the mine, they did not own the development, they did not own the tipple, the foundation, the boilers set in; they did not own any of the labor on it, but only certain pieces of machinery. All that they owned was not over,—they did not own over one-fifth of what was there, of the value of the improvement.
Q. What do you mean by owning the labor?
A. Well I will take for instance a boiler. Say you pay $1,000.00 for that boiler. When you take that boiler to put it in use, you pay $1,000.00 more to move it on the ground and set it, big foundations and put up the brick work over it, and you will probably pay $300.00 or $400.00 more for the piping that goes with it. The Kali Inla Company only owned the boiler but not the labor and setting to put it in place.
Q. Was there an expenditure of $1,000.00 for the boiler?
A. Yes. It depends on the size of the boiler. Different boilers require different kinds of setting, and it depends on how they are set. I have seen them in the mills set in mud and that does not cost very much.
Q. I am talking about your setting.
A. Yes, it cost us $1,000.00 to set a boiler.
Q. Where? A. At No. 4, and at most of our mines.
Q. How about the Mammoth Vein?
A. And at the Mammoth Vein, too. They are the same sized boilers at Mammoth Vein as at No. 4.
3000 Q. Coming to No. 3, how long had it been before the 17th of July, 1914, since Mine No. 3 was operated?

A. We never operated No. 3 as a mine by itself. The coal from No. 3 went out through No. 4 shaft. That was our object in driving those two mines together, so they could be operated as one mine and cut off some of the expense.

Q. How much coal did you take through the slope from No. 3 to No. 4? A. How much?

Q. Yes, say daily?

A. I cannot state that. We did not operate all of the time because we got enough coal out of No. 4, but it could send over there 200 or 300 tons a day. It could get out that.

Q. Had you taken any out of that for any period of time?

A. Yes.

Q. Did you ever take any out of that? A. Yes.

Q. When and how much?

A. I cannot state just how much, but we taken a considerable amount. We driven lots of entries and taken considerable coal out of there, and my recollection is we were operating No. 3,—the coal was coming from that part of the mines in 1913.

Q. You were engineer down there; now, you say you were thoroughly familiar and you were an expert engineer and there for that purpose? A. Yes.

Q. How much coal did you take out of No. 3 and when did you take it out?

A. Although I am an engineer and familiar with the property, I cannot state all these different items of statistics that you asked for. I cannot state how many tons of coal we took out of there, but we took a considerable amount of coal from there.

Q. Approximately how much?

3001 A. I cannot approximate it, but we taken a considerable amount of coal out of No. 3 mine and we operated it at different times. We went to a big expense to take coal out that way when we needed it, and we operated the mine, and, as I stated, took out quite a large amount of coal. And we intended to operate it right along. That was the reason for making these improvements, to operate it.

Q. What did the daily tonnage of No. 4, the output of No. 4 daily amount to at the time that John Cameron took charge as superintendent?

A. Well, when John Cameron was there it ran up to over 800 tons, but the average was not that high; it was along about 600 tons.

Q. What amount of output was there at the time he took charge of it? A. Close to 600 tons.

Q. Close to 600 tons? A. Yes.

Q. Mr. Denman, by way of refreshing your memory, is it not a fact that you dropped below 400 tons and the mine was in bad shape when John Cameron took charge of it and that he worked it up to 900 tons when that closed down in violation of your contract with the miners and went on the open shop basis? A. No, that is not a fact.

Q. It is not?

A. No. There is a part of that statement that are facts. We ran up to 900 tons a day, that is a fact, but it is not a fact that the mine was in bad shape. The mine was not in bad shape in any particular. The mine was very well ventilated and it had lots of development, and John Cameron got a big output out of it, but it was not because the mine was in bad shape previous to that time that the output was not so large.

Q. You say it had a 600 ton output when John Cameron took charge of it?

A. In the neighborhood of 600. It might have
3002 been 575, but it was close to 600 tons a day.

Q. When were you in that mine last before you returned here in the spring of 1914?

A. I was down about there—I left here at the end of 1913, —just before the first of 1914, and I was down there shortly previous to that time. I cannot state the date. I was down there the last of the year.

Q. Were you in Mine 4 and did you make an examination of it?

A. A short time previous to that, yes; along the end of 1913.

Q. Did you examine the mine at that time?

A. Yes, I was in it and examined the mine.

Q. How extensive was your examination?

A. Well, I walked through the mine. I was familiar with them. It was my business to be familiar with them, and I knew the condition of the mines.

Q. What was the condition of the tipple of No. 3 in the spring of 1914?

A. The tipple was in bad condition because we did not use that tipple. We only used it for sheave wheels to carry the coal down to the mine. The mine used No. 4 tipple.

Q. It was all [delapidated,[wasn't it? A. Yes.

Q. And caving in?

A. Yes, because we had not kept that up.

Q. Did you own any property in that section other than mentioned in your testimony in chief yesterday?

A. Let's see, we owned the Dallas, what is known as the Dallas mine, we owned the Hoffman mine, we owned Mam-

moth Vein No. 1 with two tipples, we owned Prairie Creek No. 3 and No. 4, and we owned Coronado. That is correct.

Q. Did you own No. 6 Midland?

A. We leased that from the Cherokee Construction Company.

3003 Q. How long did you operate that?

A. About from 1906 or 1907 up to 1914.

Q. The McKitchin lease is adjacent to the property on which No. 6 is located? A. Yes, sir.

Q. No. 6 is still standing?

A. Yes, sir it is still standing and being operated.

Q. It never was troubled in any way? A. No.

Q. You estimated your loss on the McKitchin lease by reason of the destruction of the property, I believe at $20,000.00? A. No, about $13,000.00.

Q. $13,000.00? A. Yes.

Q. How do you reach that conclusion? What process of reasoning?

A. Through the destruction of these properties we lost these leaseholds.

Q. I am talking about the McKitchin lease.

A. I have to go over a little roundabout way to get to that point to explain it. The coal from the McKitchin lease was being taken out through No. 6 mine, which we leased from the Cherokee Construction Company. When we lost this leasehold and lost this mine we had no way of getting the coal out from the McKitchin lease, and we had done a lot of work on it, driven these entries and expended $13,000.00, for which we had had no return, and we make claim for that advanced development, which was lost through the concellation and loss of this mine through which the coal was taken.

Q. And by reason of that you lost the McKitchin lease?

A. Yes.

Q. Why would you put a concrete wall between the McKitchin lease and this Mine No. 6 and abandon the McKitchin lease? Why did you do that before you quit work?

3004 A. We did not abandon the McKitchin lease.

Q. Well, you put a concrete wall between the McKitchin lease and No. 6, did you not? A. Yes.

Q. And just shut it up and abandoned the McKitchin lease, didn't you?

A. No, we did not abandon the McKitchin lease, I will explain that.

Q. You were not doing any entry work at all, were you?

A. We had been doing entry work, but we were not doing it just at that time.

Q. You were not doing any entry work at the time you closed it up with a concrete wall, were you?

Mr. McDonough: The witness started to explain about that concrete wall and counsel did not give him an opportunity.

The Court: Well, he has gone on by it. You can make a memorandum of it and take it up.

Mr. Covington: I am willing that he explain it if he desires to do so. I did not understand that he had started to explain.

Q. Explain why you put that wall there?

A. There was no intention of abandoning the McKitchin lease. Previous to this time we had a considerable amount of entry work above the shaft, and this slope made a good deal of water. We thought we would work out this entry work on the other side of the mine; so, in order to save the expense of pumping that during that season, we built this concrete wall across the slope to shut [of] this water. That wall was not anything we could not take down. It only cost about $100.00 to put that concrete wall in, and it would probably cost ten or fifteen dollars to take it out of the road.

That was simply to save the expense of pumping
3005 while we were taking the coal out of the other part of the mine, and there was no intention of abandoning the McKitchin lease, because we paid royalties under it all the time. If we had any intention of abandoning it, we would have quit paying the royalties and thrown it up. It was simply to save the money for pumping the water from that slope.

Q. You closed it up and quit paying the royalties?

A. No, sir; we didn't quit paying the royalties. If we had intended to abandon that lease we would have done it that way, we would have quit paying the royalties.

Q. When did you put the concrete wall in there?

A. I cannot state just the date, but it was sometime previous to that, maybe six or eight or ten months. I cannot state just how long previous.

Q. Which one of the plaintiff companies here was operating that mine? A. The Mammoth Vein Coal Company.

Q. The Mammoth Vein Coal Company? A. Yes.

Q. What amount of royalty was due on this McKitchin contract at the time you closed down?

A. We paid the royalty regularly.

Q. That is not what I asked you, Mr. Denman?

A. If we paid the royalty regularly, there was nothing due.

Q. Was it due quarterly or semi-annually or annually?

A. I have forgotten just how it was paid. I know I used to sign vouchers for the payment of the royalty, so much to each heir. I don't know whether it was paid monthly or quarterly or semi-annually; but I remember signing vouchers to each heir for their proportion of this royalty.

Q. Did you close down that mine?

A. No, the mine was in operation in 1913.

3006 Q. Was it in operation in 1914?

A. No, I don't think it had been started up in 1914. This mine was a mine that shipped domestic coal. The coal was not very thick up there and it was shipped domestically, and we only ran that in the season when the domestic market was on. It did not go to railroads, but only for domestic use.

Q. When did you close it down? A. We ran in 1913.

Q. What time in 1913 did you close it down?

A. I cannot state what time. I do not even know that we closed it down in 1913. I know it was running in 1913, but I cannot state the time it was closed down.

Q. What was the life of your lease on No. 6?

A. There was a contract with the Cherokee Construction Company allowing us to take the coal from the McKitchin lands out through this shaft, using its equipment, and that contract was indefinite, so I cannot state how long that was to run. I think it was an indeterminate term, as long as there was any coal in the McKitchin lands.

Q. What did you pay for it? A. Two cents a ton.

Q. Two cents a ton? A. Yes.

Q. What was the minimum?

A. The minimum to the McKitchins?

Q. Yes. A. I think $1,000.00 a year.

Q. Who is operating that mine now?

A. Mr. Rogers, Horace Rogers.

Q. He is operating it under a lease from your company?

A. No, I think he is operating under a lease from the Cherokee Construction Company or the Midland Valley Railroad.

Q. You never operated it any more after you closed down in 1913?

A. No, it was never operated after we closed it down the last time.

3007 Q. In estimating the values of these leases about which you testified yesterday, you based your esti-

mate upon what you expected to make out of it in the future, did you? Profit you expected to derive?

A. I made my estimates on the general condition that existed in this field, on the scarcity of coal land and on the thickness of the coal and the quality of the coal and the market demands for this coal, and of course the profits you expect to derive from anything depends on all these conditions. The value of anything depends on what you can make out of it, but what you could make out of it depended on a number of conditions that existed.

Q. Yes. You based your estimate upon the conditions as they exist today, the high price of coal by reason of the conditions that exist today, is that true?

A. I based it on my general knowledge of conditions.

Q. In arriving at that general knowledge, did you take into consideration the high price of coal today and the circumstances surrounding the making of that price?

A. Well, the conditions today verify our hope that we had, our thought and hope we had back in 1914. We expected that the coal business would pick up and would become better. We had good reasons for that. We had gone through a period of development and gotten the mines in good shape, and we expected to make a profit in the future and the present condition of the coal business only fortifies that judgment we had then.

Q. Did you conclude then that the conditions that exist today would come about and would verify your opinion at that period? The conditions that exist today, did you have in mind that they would verify your opinion entertained then?

A. Yes. Take it in the last year, if we had been able
3008 to operate we could have made out of those properties, producing as much as they did, we could have made more than any price set on those leaseholds.

Q. I am asking you, Mr. Denman, about your opinion at that time. Did you anticipate that we would be involved in a great war at this time and that prices would go sky high?

A. No, I did not anticipate there was going to be a great war at this time.

Mr. Denman, you qualified as an expert on yesterday?

A. I answered the questions asked of me.

Q. Now, [supposed] you owned leases on 2700 acres of coal land, the veins from six to eight feet thick, and have been developing and equipping mines four or five in number, with a producing capacity of from 500 to 1100 tons per day each, and have operated the same for several years as fully as

market conditions permitted, and had during the period of operation mined out approximately 400 acres of the 2700 acres, with the property managed by experienced and qualified mining engineers it had paid no dividends and had, during the years operated expended an average of $465,000.00 a year for labor, royalties, machinery appliances, the entire sum realized from the coal produced, and that during the years operated had accumulated an outstanding indebtedness resulting from such operation of over $400,000.00, and at the end of that period of operation did not have sufficient cash on hand to pay the minimum royalty to provide against forfeiture, what, in your judgment, would be the value of such leases? A. About $500,000.00.

Q. In a property you spent millions on and never realized anything from, and went in debt over a half a million
3009 dollars, it is worth over $500,000.00? A. Yes.

Mr. Covington: That is all.

Redirect Examination

By Mr. Drinker:

Q. Go on, Mr. Denman, with what you were going to say when Mr. Covington said, "That is all".

A. What I was going to say is that although these properties have declared no dividends, that is no indication of the value of the property. This money taken in has all gone back into the development of these properties and because they have not paid any dividends does not lessen the value of the properties themselves.

Mr. Covington: If the court please, I neglected to offer this in evidence, this Exhibit No. 15.

(Exhibit No. 15, so offered in evidence, is in the words and figures following, to-wit):

(See [marginal] page 2564 for Exhibit No. 15 referred to.)

By Mr. Drinker:

3010 Q. Now, Mr. Denman, in answer to Mr. Covington's question in connection with your expectation of profit having been realized by the outcome of the past three years, have you made any calculation based on the actual cost previous to shutting down in 1914 for a year, adding to from time to time the increased cost of labor and materials to the present date, and also based on the price of coal at that time, adding to it the increased price from time to time since that period, in order to determine what profit could have been realized by

these mines if they had been permitted to operate during the period which has elapsed since their destruction? A. I have.

Q. Will you please state in as brief a form as you can the process and result of that calculation?

Mr. Warrum: The defendants separately object to the witness engaging in a speculation as to how much profit he would have made.

The Court: I think it is proper redirect examination, as I think that has been opened by the defense, and it is an explanation of the cross-examination. The objection is overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. The result of this computation is that if we had been able to operate these mines from October 1st, 1916, to November 1st, 1917, these mines would have made a net profit of $600,000.00 and still have the property remaining.

Q. Would they have lost anything before October 1st, 1916?

Mr. Warrum: The defendants desire to object to this as calling for speculative testimony.

3011 The Court: The objection is overruled; it is explanatory.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. I do not think we would have lost any money previous to 1916, but in making my computation, in order to be conservative, I allowed that they would lose from the period of 1914 up to October, 1916, the same average amount per ton that our report [show] we had lost previous to that time, 7 cents a ton, and I estimate that loss to be $42,000.00, and I deducted that from my estimate, leaving approximately $600,000.00 in profit.

Q. Now, during the year 1913, what was the cost of operation of the Coronado?

A. My recollection is that it was $1.57.

Q. And the Mammoth Vein No. 1?

A. I think it was about $1.75 or $1.77.

Q. And Mammoth Vein No. 6?

A. That was $2.16, I think.

Q. And Prairie Creek No. 4?

A. About $1.80. I cannot remember exactly. It was something like $1.80.

Q. Have you any memorandum from which you can refresh your recollection?

A. I have no memorandum with me. It was in the neighborhood of $1.80, but I cannot state just exactly what.

Q. Do you remember what the average cost of all those mines was for 1913? A. $1.72.

Q. Approximately what proportion of your cost of mining consists of the wages? A. About 80 per cent.

Q. Is that just wages paid to miners or wages paid to everybody?

A. Well, that is just the wages paid to the miners,—when I speak of miners, I mean all the men that work around the mine. I do not mean just the men that dig the coal, but the men, everyone connected with the operation of a coal mine.

Q. What increase, if any, in the wages paid as you
3012 have stated, has become effective since April, 1914?

A. Well, there was a raise of 5.26 in 1914 and 5.55 in 1916, and then there was an additional raise of 20 per cent in May 1st of this year.

Q. When you state it 5.26 and 5.55, did you mean cents?

A. No, I meant 5.55 per cent.

Q. Now, what was the total of the first two increases of 5.26 and 5.55? What would the total have amounted to in cents per ton on your production?

Mr. Warrum: The defendants renew their objection.

The Court: Same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. This increase added onto the cost of wages would have added about 16 cents a ton.

Q. Now, were those all of the increases in wages effective up to October 1st, 1916?

A. Well, there was an increase in material, too.

Q. No, I said wages.

A. That is all the increase in wages up until in October, 1916.

Q. And the 20 per cent increase was when?

A. That was in this year.

Q. What part of this year? A. About the 1st of May.

Q. What increase, if any, was there in the cost of materials prior to October 1st, 1916?

Mr. Warrum: The defendants separately renew their objection.

The Court: The same ruling.

To which ruling of the court the defendants, and each
3013 of them, then and there duly excepted and still except.

A. I have added over 50 per cent increase in the cost of material.

Q. What increase was subsequent to October 1st, 1917, or was that 50 per cent—

A. (interrupting). That includes the two. In the first item I took 25 per cent and added over 25 per cent in the second increase onto that.

3014 Q. Now adding the increase in materials which you have referred to as having become effective prior to October 1, 1914, and the increase in the cost of material which you say became effective prior to this, to what figure would that have increased your cost of producing coal, based on your 1913 figures?

Mr. Warrum: The defendants separately renew their objection. It involves speculation on the part of the witness and covers a time after the destruction of the property.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, then and there duly excepted and still except.

A. I estimated on October 1, 1916, the coal would cost $1.92 a ton, based on what our coal cost in 1913 and adding the increase in the cost of wages and material, it would bring it up to $1.92 a ton.

Q. Do you know what was the selling price of coal from the period of October 1, 1916, to May 1, 1917?

A. It averaged approximately $2.90 a ton.

Q. How much profit would that have left in cents per ton over your operating cost calculated for that period, from October 1, 1916 to May 1, 1917, that you have stated?

Mr. Warrum: The defendants separately renew their objection.

The Court: Same ruling.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. That would have left a profit of 98 cents a ton.

Q. You have stated that on May 1, 1917, there was a 20 per cent increase in wages? A. Yes.

3015 Q. And that you added at that period over 25 per cent increase in cost of materials for the succeeding period.

A. Yes.

Q. What would that additional cost of labor and materials have added to your cost of production which you figure as of October 1, 1916?

Mr. Warrum: The defendants separately make the same objection.

The Court: Same ruling.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. It would have been worth the cost of $2.30 a ton.

Q. How long would that cost have persisted according to your judgment?

A. That would have persisted up to the time there was another advance in wages or material.

Q. When was there any substantial advance?

A. The advance has not gone into effect in this field yet. There is an advance, but it is not effective yet.

Q. So your cost of production—did you state it was $2.30 from May 1st? A. Yes.

Q. That cost of production would have persisted from May 1st 1917 up to the present time? A. Yes, the cost.

Q. What was the current price of coal between May 1st, 1917 and August 1st, 1917?

Mr. Warrum: To which the defendants severally renew their objection.

The Court: Same ruling.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

3016 A. About $3.40 a ton.

Q. How much profit would that have left after deducting the $2.30 as the cost of operation during the period from May 1st, 1917 to August 1, 1917? A. $1.10 a ton.

Q. Was there a change in the price, the selling price of coal on August 1, 1917?

A. Yes, the coal price was put down.

Q. How did it happen to be put down?

A. The Government put down the price.

Q. To what figure?
A. They put it down in this field to $2.60, but immediately moved it up again to $3.05 a ton.
Q. Now, what was the approximate tonnage from these mines, the capacity of these mines—the total of these mines during the period I have mentioned?
A. Well, these mines had a capacity of nearly 3000 tons a day. That is based on what they had been producing when shut down and talking about 18 days a month that would make about 250,000 a month.

Mr. Warrum: The defendants object separately to that testimony regarding the period stated for the reasons heretofore given.

The Court: The objection is overruled. This is proper redirect examination.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted, and still except.

[—] Mr. Denman, were the figures you have given just now based on union or non-union conditions?
A. They are based on union conditions.
Q. They are based on the same conditions as existed before the shut-down in 1914?
3017 A. Yes, and on the union conditions now existing.
Q. If these mines had been permitted to continue operating and had retained their leases, how long a life at their then production would these mines have had?

Mr. Warrum: The defendants separately renew their objection. No cross-examination which has been made suggests any injury of this kind.

The Court: I think it has, unless it goes beyond the life of the lease he was interested in.

Mr. Drinker: I really do not know. I was asking the witness.

The Court: I think it would be immaterial beyond the life of the lease. The objection is sustained.

Mr. Drinker: I will withdraw that question.

The Court: At this point we will adjourn for the noon recess until 2:00 o'clock.

3018 Thursday, November 8, 1917, 2:00 P. M.

Pursuant to adjournment, Court reconvened at 2:00 o'clock P. M., the parties appearing as before, and the following proceedings were had.

Mr. Drinker: If the court please, the schedule of property that Mr. Covington offered, the copy is correct, and we have no objections.

Mr. Covington: We offered it a moment ago, and he asked to compare it.

The Court: That is exhibit what?

The Stenographer: Defendants Exhibit 15.

HEBER DENMAN, recalled as a witness on behalf of the plaintiffs, having been first duly sworn, testified further as follows:

Redirect Examination (Cont'd.)

By Mr. Drinker:

Q. Mr. Denman, these leases that you have stated were cancelled and as to which you testified, did the lessors in each case assume possession of those lease.

A. Yes, sir.

The Court: The leases or the leased land?

Q. The leased land covered by those leases.

A. They did.

Q. Mr Denman, you have been asked in connection with the lease of the Central Coal and Coke Company, that held the Hoffman mine, which expired in 1914. That company was operating under union conditions during that period, was it? A. I was.

Q. Now, do you know what royalty that company was
3019 paying?

A. That company was paying,—

Q. (Interrupting.) Under that lease.

A. Eight cents a ton.

Q. You have also been asked in reference to certain other leases which have been made by the receivers, since the receivership of property owned by the Hartford Coal Company. Do you know how many of these leases there were, and when they were executed, and what they were?

A. I do.

Q. State when they were executed, with whom, and what were they royalties?

A. I don't know the dates they were executed.

Q. As near as you can give them.

A. There was a lease made on the land by the Hartford Coal Company to a man named Abe Ruffley who had one or two partners in with him; I think one man named White was a partner.

Q. About when was that lease made?

Mr. Neal: The defendants separately object because these leases themselves if in evidence, would be the best evidence of the royalties, and the conditions surrounding them, and for that reason we object to oral evidence.

The Court: Objection sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Mr. Denman, you have been asked with reference to a concrete wall, between the McKitchen lease and the Mammoth Vein No. 6, I think it was. Do you know where that wall was with reference to the land line?

A. It is about 75 to 100 feet of the land line, on the land of the Cherokee Construction Company.

Q. You were also questioned relative to the condi-
3020 tion of the old tipple at Prairie Creek No. 3, which you stated, I believe, was in a [delapidated] condition Did you make any claim in connection with the itemization of damages at Prairie Creek No. 3 and 4 on account of the destruction of that tipple?

A. Not under the ownership of the Prairie Creek Coal Mining Company. I made some claim for damage to property owned by the Cherokee Construction Company, but I very much reduced the valuation on account of the [delapidated] condition of the tipple which I know existed.

Q. Now, in connection with the 360 acre tract, was any part of that tract covered by lease to any other company, or sub-leased? A. Yes, sir, 20 acres of it.

Q. By what company and to what company?

A. It was sub-leased to the Hoffman Coal Company.

Q. By what company?

A. By the Mammoth Vein Coal Mining Company.

Mr. Drinker that is all.

Recross Examination

By Mr. Covington:

Q. Did you turn over the lease to the Hartford Coal Company?

A. No, we didn't turn over a lease. There was a sublease of 20 acres made to the Hoffman Coal Company.

Q. When?

A. I can't state the date when it was made.

Q. Was that one of your companies?

A. The Hoffman Coal Company?

Q. Yes.

A. No, the Central Coal & Coke Company acquire the lease of the Hoffman Coal Company later on, and at the expiration of that lease it reverted to the Hoffman Coal Company.

Q. Is that mine in operation now?

A. No, that was No. 7, and that has not been in operation since the last of the years,—

3021 Q. (Interrupting.) No. 7 is not in operation?

A. Yes, sir.

Q. Was any of these mines not leased and in operation?

A. What mine do you refer to?

Q. Well, one of this group of mines, of which you are speaking, the plaintiffs in this case.

A. No, none of those mines except Mr. Ruffley has taken some of the coal out of the Hartford Coal Company's mine through his mine, but none of that group are in operation.

Q. You say that the Central Coal & Coke Company operated the Hoffman mine, and operated it with union labor.

A. They were operating it.

Q. Now, is that the reason that you would not extend the lease?

A. Oh, no, that had no connection with it.

Mr. Covington: That is all.

(Witness excused.)

3022 EDWARD J. M. PEAKE, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. What is your full name? A. Edward J. M. Peake.

Q. What is your present occupation?

A. In charge of freight claims for the Midland Valley Railroad.

Q. With headquarters at Muskogee?

A. Yes, sir.

Q. I hand you Plaintiffs Ehibit 113, and will ask you if you have produced that from the files of the Midland Valley Railroad Company, under custody and control, covering Midland Valley Car 160, on July 16th, 1914?

A. Yes, sir.

Q. Taken from the records of the Midland Valley under your control and custody? A. I did.

Q. Do you know the signatures of the agent, R. B. Cartlew. A. Yes, sir.

Q. And was he agent of the Midland Valley at Midland at that time? A. Yes, sir.
Q. Is that his signature? A. Yes, sir.

Mr. Hull: I have agreed with the witness that if he will leave this original her euntil tomorrow or next day that a copy will be substituted, inasmuch as this original is part of an insurance claim which has not been settled.

The Court: It may be done, by substituting a certified copy with the clerk.

Mr. Hull: You may cross-examine.

Cross-Examination

By Mr. Covington:
Q. What is your name? A. Edward J. M. Peake.
3023 Q. What official position do you hold?
A. In charge of freight claims.
Q. Were you in the same department last year?
A. In the freight claim department,—sir?
Q. How long have you been in that department?
A. Three and a half years, about.
Q. When did you find this bill that you have presented here, this exhibit?
A. I found it yesterday when the inquiry came; it has been in my custody all the time since it has been in there.
Q. This is one of the cars that was involved in a suit that was tried at Muskogee, the Midland Railroad Company against the insurance company for claim on this car?
A. It was a claim filed against us.
Q. A claim filed against you? A. Yes, sir.
Q. Who filed the claim against you?
A. The holders of the bill of lading.
Q. But the car that was destroyed, you had a claim against the insurance company for the car, did you?
A. I know nothing about the insurance, that was handled by our legal department.
Q. They didn't know where you were when they tried that case, did they?
A. I assume that they did, but I cannot speak of their intention and their knowledge; all I know is I have the bill of lading, and have had it in my custody.
Q. Where did you get it? A. From my files.
Q. When were your files got up?
A. At the time we got that bill of lading, that claim number is stamped on it.
Q. Made by your agent at Midland?

A. I cannot say as to that, I would have to consult
3024 my files.

Q. Was this stuff shipped f. o. b.?

A. I know nothing about that; it is a shippers order bill of lading.

Q. Bill of lading attached?

A. We don't attach it.

Q. I am trying to get at how this found its way into your possession?

A. Why, it is not infrequent. I get them frequently, sometime when diversion is asked, and sometimes a bill of lading is not accomplished by the delivery of the freight, and on surrendering the bill of lading we are asked to satisfy it.

Q. What did this particular car contain? Where was it shipped from and to where?

A. The bill of lading shows.

Q. Now, is it not a fact that this was one of the cars that you claim damages for against the insurance company, and you couldn't identify the car, or it had been lost, and had to be eliminated on that account?

A. I know nothing about it at all; I know I had that bill of lading, and have had it in my possession.

Redirect Examination

By Mr. Hull:

Q. And this bill of lading represents a car on which delivery was not accomplished?

A. Presumably so, because we could not make delivery without taking up the bill of lading, the delivering agent taking up the bill of lading.

(Witness excused.)

Mr. Drinker: Mr. Beatty.

Mr. Covington: Before proceeding with this witness, we are advised by counsel for the plaintiffs, that Friday afternoon they will complete their testimony, and in view
3025 of that fact, we have a good many witnesses here, and in view of that we would like to be advised as to the situation and if they are not going to finish this week, we would like to excuse our witness.

The Court: The Court does not like at this time in the week to assume there will be witnesses here the rest of the week.

Mr. Drinker: We have stated to counsel that we hope to be able to finish by Saturday noon at least, and as far as we are concerned on the direct examination, I doubt if it will take that long.

The Court: This is only Thursday and I think perhaps we can tell tomorrow if that will be of advantage to your witness, and if you will call it to my attention tomorrow we will take that matter up.

3026 W. E. BEATY, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. You are in the coal business, Mr. Beaty?

A. Yes, sir.

Q. How long have you been in that business?

A. In the coal sales business and operating business about 15 years.

Q. Have you sunk shaft and slopes and constructed mines?

A. Yes, sir, to a limited extent.

Q. How many shaft or slope mines have you constructed?

A. I never sunk any shafts, but I have some slopes.

Q. Where?

A. In Oklahoma, in the McAlester field.

Q. Now, are you familiar with the sale of coal, and the competitive conditions between the Arkansas and Oklahoma fields? A. Yes, sir.

Q. How long have you been engaged in that business?

A. About fifteen years.

Q. And how long were you engaged in the construction and operation of coal mines?

A. Something like ten years.

Q. Mr. Beaty, I am going now to ask you a hypothetical question as to the cost and construction and development of a coal mine of a given capacity. I show you two pictures, one marked Plaintiffs Exhibit 70 and the other Plaintiffs Exhibit 74, representing two coal tipples. On the assumption that these tipples are to be constructed over a coal seam on a pitch of fifteen degrees, by means of a slope being driven down into a coal vein averaging seven feet three inches

in thickness, to a depth of 2000 feet, and development
3027 in connection with that mine is to be made, and all the machinery, paraphernalia and other equipment ordinarily incident to the construction and equipment of a mine and tipple sufficient to bring up the daily production of that mine to a production of 600 tons per day, such construction to be made in the spring of 1914,—I will ask you—

The Court (interrupting): Where?

Q. (Continuing.) In Sebastian County, Arkansas, and the two tipples to be erected and equipped in connection with the operation, substantially as shown in these two pictures, and I will ask you what is the minimum amount of money that it would cost to drive that slope, build and equip that tipple and mine and bring it up to that capacity of production that I have named.

Mr. Warrum: The defendants separately object to the testimony sought to be adduced from this witness by the question, for the reason that the pictures are an improper foundation for the expression of an opinion on the part of the witness, and because no question of this kind is involved in this case. The question is what was the loss, and it is not a speculative question as to the cost that the witness might estimate would be required in a given case.

Mr. Drinker: If the Court please, we think that under the rules, where a property has no current salable value, it is proper to fix the value, to have witnesses, expert witnesses, asked as to the cost of reproduction, not as a measure of damages, but as an element which is properly to be considered by the jury, under proper instructions of the Court, to estimate the reasonable value of the property.

3028 The Court: The first question should be as to whether or not he can give an opinion. You are asking him outright, assuming that he can.

Q. (By Mr. Drinker.) Preliminary to your answer of the long question, which I won't repeat, are you—have you sufficient information from experience in connection with the development and equipment of slope mines, to be able to answer this question that I have given you, intelligently?

A. In a general way in the McAlester field, I have had no experience in the Sebastian County field.

Q. Is there any substantial difference between the cost of development and equipment of a mine in the Sebastian County field and the McAlester field?

A. I don't know that there is, I wouldn't think that the same conditions would exist.

Q. Is that a continuation of the same coal vein, in the two fields? A. I understand so.

Q. Is that sufficient foundation, your Honor,—now, have you the question in mind?

The Court: That is, can you tell?

Q. Have you sufficient information to give an intelligent answer to that question, as to the minimum cost of developing and equipping a mine of that character, in this field?

A. Any answer would be an approximation of the cost.

Q. What I asked you was the minimum cost, I don't ask you accurately in dollars and cents, but the minimum cost of developing and equipping a mine of this character.

The Court: Your answer to this is yes or no, whether you can or not.

A. I think not.

3029 Q. You think not?

A. No, sir.

Q. Mr. Beaty, will you please state what that field from Sebastian County, Arkansas, enters into competition with what market, in a general way?

A. In the northern market, in Illinois, Kansas and Colorado.

Q. With what coal on those markets?

A. Colorado coal and Illinois coal and Kansas coal, and in fact all classes reaching the northern market.

Q. And in the south?

A. New Mexico and McAlester Coal and Texas coal, Texas lignite, and Alabama.

Mr. Drinker: You may cross-examine.

Mr. Covington: No questions.

(Witnesses excused.)

3030 H. C. RICE, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your full name? A. H. C. Rice.

Q. In what business are you engaged?

A. In the coal business.

Q. Are you an operator? A. Yes, sir.

Q. Have you built and equipped coal mines?
A. Yes, sir.
Q. Shaft or slope?
A. Slope, and I have had some to do with shafts.
Q. How many slope mines have you equipped and built?
A. Two.
Q. Where? A. Dow, Oklahoma.
Q. Do you know whether the conditions of building and equipping coal mines in that field are similar with regard to cost, as to the conditions in the Sebastian County, Arkansas field?
A. The construction part would be somewhat near, but under ground part I do not know.
Q. Do you feel competent to answer a question as to the minimum cost of the building and equipment of a coal mine, a coal tipple in Sebastian County, Arkansas, of a capacity of 500 tons? Do you feel competent to answer what is the minimum cost? A. Yes, sir.
Q. How long have you been engaged in the construction and equipment of mines, and the management of them?
A. Five years.
Q. Mr. Rice, I show you a photograph marked Plaintiffs Exhibit 69, and will ask you what would be the minimum cost of building and equipping a tipple of that char-
3031 acter, and of sinking a shaft in connection with it to a depth of 130 feet, through wet hard sandstone rock; with an air shaft of 80 feet, through the same material, and making sufficient development in connection with that property to bring it up to a maximum production of 1000 tons a day, say that that was its maximum production, and bring it to an average daily production of six or seven hundred tons a day, and equipping it with all the machinery and paraphernalia necessary to a mine, and operation of that character, to produce that stated production.

Mr. Warrum: The defendants separately object to the testimony sought to be adduced by this hypothetical question of the witness, for the reason it does not state proper facts upon which the witness can base an opinion; the pictures being substituted for dimension, and direction, and because the hypothetical question is not in accordance with the proof.

The Court: I don't think there is a sufficient foundation laid for the question [anway]. The objection will be sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time, duly excepted and still except.

Mr. Drinker: May I ask the Court, was the ruling on that, that the question did not go into sufficient particulars, or that the witness had not sufficiently qualified.

The Court: Both, and on the further objection that this is not the measure of damages and to be of any value here it must come from men that give this valuation of the property, because it must be from his view point that these
3032 values are taken. If they are of any value here that must be true. You see this property may have cost ever so much money, and it may not be worth anything, compared with the cost, and it may have been worth much more, because it would require reproduction now, but that is not evidence of its value.

Mr. Drinker: If the Court please, might I—

The Court: I think I understand this question, and I don't care to hear anything more on it at all. Just proceed now. The objection is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: That is all.

Mr. Covington: No, questions.

(Witness excused.)

3033 E. W. HOGAN, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. State your name. A. E. W. Hogan.
Q. What is your business, Mr. Hogan?
A. I am in the coal business.
Q. Are you an operator or a salesman? A. Both.
Q. How long have you been operating coal mines?
A. Well, not long. With the present company about two and one half years.
Q. With what company are you now?
A. The Blue Ridge Coal Company.
Q. Where at? A. McCurtain, Oklahoma.
Q. Have you constructed shaft mines? A. No, sir.
Q. Have you constructed any slope mines? A. Yes, sir.

Q. In what country?
A. In this community, about eight miles from here.
Q. In Sebastian County? A. No, in Oklahoma.
Q. Is that the same field as the Sebastian County coal field?
A. I do not understand what you mean by that question, Mr. Drinker.
Q. Is it underlaid with the same vein and does it have the same general conditions in connection with the development of coal properties?
A. It is not the same seam, but it is similar to seams in this country.
Q. Are you familiar with the mines in Sebastian County?
A. Yes.
Q. Do you know what mines these two pictures, Ex-
3034 hibits 70 and 74 are a picture of?
A. I could not say for a certainty, but I have a good idea.
Q. Have you visited the mines in Sebastian County belonging to the Bache-Denman Coal Company? A. Yes.
Q. When? A. Before their destruction.
Q. How many times have you been there?
A. I think it was two or three times, I am not sure.
Q. When were you there?
A. April 1914, February and March 1914.
Q. In what capacity?
A. I think I was there also in December 1913.
Q. In what capacity were you there?
A. I am commissioner for the Southwestern Interstate Coal Operators Association.
Q. To what extent did you examine those properties?
A. Well, I was not examining the properties. I was there to settle disputes, but I was over most of the entire property.
Q. Were you down in the mines?
A. No, sir, not at that time.
Q. Have you ever been down in mines in that vicinity?
A. Yes.
Q. Were you ever down in these mines?
A. I was in Prairie Creek once, and I was in the mouth of Mammoth Vein slope.
Q. How many slope mines have you constructed yourself or under your supervision.
A. Two within the last year.
Q. What was your function relative to the construction of those? A. Superintendent.

Mr. Drinker: Do I understand that your Honor has ruled that it is not competent to ask the witnesses any questions as to the cost of reproduction at that time?

The Court: I do not think it is necessary at all.

Mr. Drinker: The purpose of it is to fix a minimum
3035 value on these properties. The other side have taken the position they are valueless or of insignificant value.

The Court: It does not necessarily follow that the cost of reproduction would be any evidence of the value of this property here. While it might be an element that would enter into the mind of a man that knew the mine and fixed its value, it is not, standing alone, a measure of damages,—standing alone by itself, it is not of value. It is only when associated with a witness fixing the value, as getting at his mental operation,—that it is of value.

Mr. Drinker: Our thought was that it was proper to show the cost of reproduction as an element which it must consider in determining the reasonable value of the properties, under the proper instructions of the Court.

The Court: I do not think so. It can only be material in connection with the statement of the witness as basing his belief as to what the value of the property was when it was destroyed. I think the measure of damages ought to be the value of the property destroyed. Now that value can be influenced by the cost of reproduction only as that value is given by the witness and he considers that.

Mr. McDonough: That is our view, if your Honor please. I do not know whether we have expressed it plainly or not.

The Court: I do not think it is evidence at all because it can only be considered by the person giving that valuation as a basis of his mental process of arriving at his conclusion. That is my idea with reference to this question. The question is what is the value of the property destroyed? The cost of reproduction is no evidence of value.

3036 To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: I will ask a question to get it in the record.

Q. Mr. Hogan, are you sufficiently familiar with the property known as Mammoth Vein No. 1, the two tipples shown in these two pictures, to be able to give your opinion as to what was the reasonable value in the spring of 1914 of mines

such as represented on those pictures, in good working order and condition, with sufficient underground development to bring the production up to 600 tons per day, and equipped with the necessary equipment and machinery in good order and working condition necessary for an operation of that size and capacity? Do you feel qualified to state what would be the reasonable value of that property? A. No, sir.

Q. You do not? A. No, sir.

Mr. Drinker: That is all.

No cross-examination.

(Witness excused.)

Mr. Drinker: May we have just a minute, your Honor? This has broken into our program a little.

The Court: Yes.

(At this point a recess of ten minutes was taken.)

3037 J. P. KING, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. State your name. A. J. P. King.

Q. What is your business, Mr. King?

A. Superintendent of a coal company at the present time.

Q. Where? A. At Clarksville in Johnson County.

Q. Johnson County, Arkansas? A. Yes.

Q. How long have you occupied that position.

A. Since 1905,—twelve years.

Q. How large a property is that? What production daily?

A. Well, our production now is on an average of 160 tons day. I have had it above three hundred tons.

Q. Do you operate under union or non-union conditions now?

A. At the present time I am operating under non-union,—open shop.

Q. How long have you been under non-union conditions?

A. Since 1911.

Q. And prior to that time how did you operate?

A. With union labor.

Q. Under contract with the union? A. Yes, sir.

Q. Have you made any comparison between the cost of operating your mine under union and under non-union conditions?

A. Only the first two years I made an estimate of it. Since that time I have not.

Q. The first two years of operating non-union?

A. Yes, sir.

Q. Did you find it was more expensive to operate under a contract with the union or under non-union conditions?

3038 Mr. Neal: If your Honor please, we desire to object to this question first to the form of the question, and second to the evidence sought to be introduced thereby, for the reason we do not believe that the question of the comparative cost of producing coal with union and with non-union labor enters in any way to any of the issues of this case, and we do not think that such testimony is material to any issue involved here. And it calls for the consideration of matters that cannot reasonably be collateral to any issue in this case.

The Court: Mr. Drinker, I would like to have you state your theory.

Mr. Drinker: In the first place it is alleged in the statement that operating union is more expensive than operating non-union.

The Court: In what statement?

Mr. Drinker: In the complaint. We call it statement in my state. I beg your pardon. And in the second place it enters into the question of the value of these plants. Mr. Denman based his figures on the values as they would be under union conditions. Now, if we could have gotten to operating under non-union conditions, as we wanted to do, and as we tried to do, it would have made the property more valuable.

The Court: I can see a further reason too. The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: Read the question, Mr. Reporter.

(Last question read by the reporter.)

3039 Mr. Warrum: We would like to add to the objection that it calls for a conclusion.

The Court: Yes, but it is the conclusion of an expert, and I think he has laid sufficient foundation for that. That objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted, and still except.

Q. Do you understand the question?
A. Yes, shall I answer it?
Q. Yes.
A. Well, paying the same rate of wages, or the scale of wages that is paid by the union, I found for the first two years operating under the open shop plan, that I produced my coal 17 cents a ton cheaper than I did while operating with union labor.
Q. Now, to what did you attribute that saving of 17 cents?

Mr. Warrum: The defendants separately object to that as calling for the conclusion of the witness.

The Court: Same ruling.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. Well, I attributed it to being able to run my mine a greater number of days during the season, or during the year, than I could operate on account of the controversies and shut-downs—with the pit committees and so forth.
Q. In operating under non-union conditions was there any fixed number of hours that the men were required to work?
A. Well, it is just the same, eight hours constitutes a day's labor under the contract I had with the union. Eight hours is all we work now. That constitutes a day's work now, but we allow our men,—we have a very low vein of coal, it
3040 only runs from 32 inches to 36 inches, and the men all complain that if they cannot make enough coal at one shooting, or if the shots fail at 4:00 o'clock, that then they have not enough coal to work the next day, and we allow the men, if they want to, to go back in the mine after supper, or on idle days and prepare their coal. They will go back in the mine and shoot the coal and load what cars they can get, and it enables them to load more coal the next day. I have something over 100 pit cars and the miners will go in the mine and load up all of those empty cars and shoot down coal and pile it up and have it ready to load the next day when there are cars to load it into. And in that way it increased my tonnage, and brought down the cost of production, because there is a certain expense I am put to each and every day whether the mine operates or not. My mine makes more water, I expect, than any other mine. I know more than any other mine in the Spadra field, and I have a certain expense each day whether I am producing coal or whether it is idle. Therefore, the more days I can work the less cost it is in producing the coal.

Q. What, if any other conditions were incident to your operation under union contract, as compared with non-union, which affected the cost of production?

A. I do not know that I understand the question.

Q. Were there any other conditions, other than those you have named, which contributed to reduce your cost of production under non-union conditions to 17 cents below those under contract with the union?

A. I do not know of any others, except as I have stated, on account of being able to work a greater number of days during the season and getting in more time.

3041 Q. Were the men paid for working overtime as you describe? A. Yes, sir.

Q. On what basis? A. The same basis.

Q. By the ton?

A. Well, yes, sir. The ones that produced the coal are paid by the ton. The drivers, cagers and top men are paid by the hour, per day. My cost of coal, or rather my scale has always been the union scale, as good as was paid in the other districts, with a ten cent differential. That is, my coal is lower than the Spadra vein, and I have to pay ten cents a ton more than in the Spadra field, four or five miles west of me. And when the Spadra coal was 87-½ cents a ton, my scale was then 97-½ cents and I paid $1.00. I made it $1.00 even and paid a little better than the scale as I thought it would help me get more men. At this time the Spadra scale is $1.06-½ cents and adding the ten cent differential makes mine $1.16-½ and I pay $1.20 a ton for digging.

Mr. Drinker: You may cross-examine.

Cross-Examination

By Mr. Warrum:

Q. The Sparda coal is $1.16-½ now?

A. No, $1.06-½, and with the ten cents differential that would make mine $1.16-½.

Q. And that is what you would pay under union conditions? A. I pay $1.20 now.

Q. You do, as a matter of fact, pay $1.20? A. Yes.

Q. And you pay that because you cannot keep the men at work unless you pay them more? A. How is that?

Q. Why is it you pay 3-½ cents more than under union conditions if it is not because of the fact the men would

3042 not work for you unless they were paid more than the union scale?

A. I do that merely to make it even figures, instead of figuring $1.16-½. I have always told my men I would pay them

as good or better than union wages, and I have always done so, and it is a matter of business with me.

Q. Now, the vein of coal at your mine is from 32 to 36 inches A. Yes, sir.

Q. And for that reason you find it advisable to allow your men to go back and shoot the coal out at idle times?

A. I give them that privilege. I do not require them to do so.

Q. Have you had any experience in these years in working mines with veins seven or eight feet thick?

A. I have had no experience in any other mine other than the one I am now operating.

Mr. Warrum: That is all.

(Witness excused.)

3043 WILLIAM A. EVANS, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. State your name. A. William A. Evans.

Q. You are in the coal business, Mr. Evans? A. Yes.

Q. Are you a operator or a salesman?

A. I am just operating.

Q. Are you familiar with the current market price of coal for the last three or four years? A. In Oklahoma.

Q. Do the same prices apply to this field?

A. I do not know.

Q. You do not know? A. No, sir.

Q. Have—how many coal mines have you opened and equipped and in what neighborhood?

A. I have opened up four shaft mines and about four slope mines at Alderson and Hartshorn, Oklahoma.

Q. None in Sebastian County? A. No, sir.

Mr. Drinker: That is all.

No cross-examination.

(Witness excused.)

(At this point a recess was taken for ten minutes.)

Mr. Drinker: If the Court please, we had brought here under subpoena a number of other operators who were operating mines here and around in Oklahoma with a view of questioning them along the lines of the testimony of the

witnesses we have already put on the stand, but in view of your Honor's ruling I want to say to those witnesses that they can go, and that we are much obliged to them for
3044 coming. We will not try to burden the record with any more of the same kind of questions.

J. G. PUTERBAUGH, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. State your name to the Court and jury.

A. J. G. Puterbaugh.

Q. What is your business, Mr. Puterbaugh?

A. I am in the wholesale coal selling business.

Q. For what company?

A. I am president of the McAlester Fuel Company.

Q. How long have you been in that business?

A. As president of the McAlester Fuel Company since about 1907.

Q. Are you familiar with the conditions relative to the sale of coal throughout the United States?

A. Well, I am throughout the western and [cerntral[portions of the United States, perhaps.

Q. Are you familiar with the competitive conditions between the different coal fields in the United States?

A. In a general way, yes, sir.

Q. Have you visited the various coal fields in the United States? A. I have visited some of them.

Q. Which ones have you [visisted]?

A. Well, I have visited and am familiar with the coal fields of Oklahoma, Arkansas, Texas, Kansas, Missouri, Colorado, Illinois and Alabama. I have visited those and handled coal from them.

3045 Q. And what?

A. And also handled coal from those districts.

Q. Your company is sales agent for a number of coal companies, is it not? A. Yes, sir.

Q. Has your company sold the coal of the Bache-Denman mines prior to 1914? A. Yes, sir.

Q. To what extent?

A. Well, we were the selling agents for all of the coal they produced except certain tonnages to the railroads, such as the Frisco and Midland Valley on which their mines were located.

Q. Now, from your experience in connection with the sale of coal and the competitive conditions in the various locali-

ties stated I wish you would tell the Court and jury what mines compete with what others and in what markets, without going too particularly into the conditions in the eastern part of the country, but state them in a general way, but with great particularity in connection with the competition met by the various coals in the northwestern district.

A. Well, that is a rather large question because all coal competes with all other coals to a certain extent.

Q. Explain what you mean by that.

A. Well, coal is—if it is Arkansas coal, for instance, it meets every other coal that it comes in contact with as a competitor, and in some districts that competition is very small, and in others it is very great. For instance, there is acute competition between Arkansas coal and Oklahoma coal, which is the nearest producing field. And up in Kansas there is more or less competition between Arkansas coal and the Kansas coal. And when you get up into Iowa Arkansas coal there competes with Illinois coal and smokeless coal from West Virginia. And you go further on up to Minneapolis and St. Paul, which is about the furtherest limit
3046 Arkansas coal goes, and its competitor there would be the smokeless coals of West Virginia, which comes down from the head of the lakes, reaching those points by water.

In Arkansas, Arkansas coal has no competitor except possibly Illinois coal and some Alabama coal in the southeastern part of the state, which comes into the state [mosetly] by way of Memphis. In Texas, Arkansas coal's competitor would be mostly coal from Oklahoma, but also to some extent coal from Alabama and Texas mines and also from New Mexico and Colorado. There is not a very large tonnage of Arkansas coal moving into Oklahoma because there are mines in Oklahoma producing the same character of coal that move to points in Oklahoma on more favorable rates.

Q. I mean to direct your attention, Mr. Puterbaugh, more particularly to competitive conditions in 1914. Do those conditions you have stated apply to that time? A. Yes.

Q. I hand you, so that you may have in mind, a map of the United States,—so you may use it in connection with your further testimony at this time.

A. I think I have answered the question.

Q. Does the coal from Arkansas compete with Indiana or Ohio coal directly or indirectly?

A. Well, I should say to a very small extent indirectly and not at all directly.

Q. But you say it does compete with Illinois coal. In what specific markets does Arkansas coal compete with Illinois coal?

A. It competes very strongly with Illinois coal in Nebraska in such markets as Omaha and Lincoln, where there are large markets for Arkansas coal. If the supply of
3047 Arkansas coal were entirely cut off, the consumption of Illinois coal would be very greatly increased. The main competitor of Arkansas coal in Nebraska, which is a large coal consuming state is Illinois coal. The Illinois coal also competes with Nebraska in St. Louis, which is a very large coal consuming market.

Q. Mr. Puterbaugh, you said "Nebraska"; you mean Arkansas, don't you?

A. Yes, I mean competes with Arkansas coal in St. Louis. St. Louis is a very large market and uses some considerable tonnage of Arkansas coal. If Illinois coal was withdrawn from the market there, there would be a very much larger tonnage of Arkansas coal used in St. Louis.

Q. What are the principal markets in which Arkansas coal competes with West Virginia coal?

A. The main places of competition,—

Q. (Interrupting.) I am talking always now, Mr. Puterbaugh, of the year 1914, you understand?

A. Yes. The situation is substantially the same then as now. The main places where West Virginia coal is met as a competitor by Arkansas coal is in Iowa and in Minneapolis and St. Paul, and what is known as the northwestern territory, that is supplied by coal that comes into Duluth by water over the lakes. And also in St. Louis there is considerable West Virginia smokeless coal comes into St. Louis and competes at that point with Arkansas coal.

Q. What are the principal markets in which Arkansas coal competes with Colorado coal?

A. In Kansas mostly, some in central Nebraska and some in central and western Texas. Colorado and New Mexico coal coming in from the west and supplies a
3048 considerable tonnage to western and central Texas and central and western Kansas and central and western Nebraska.

Q. Did you state whether or not there is any competition between Arkansas coal and eastern coal, by way of water down around the Gulf? A. No, sir, I did not.

Q. Is there any?

A. Yes, sir, there is a considerable tonnage of West Virginia coal comes into Galveston, which supplies the local bunkering trade there mostly, and is to some extent shipped

to the interior of Texas. That is largely coal from the New River district of West Virginia. It is a character of coal similar to Arkansas smokeless coal.

Q. Does Arkansas coal compete in any market with Alabama coal, directly, to any considerable extent?

A. To a limited extent only, and that in southeast Texas in the vicinity of Houston and Beaumont and the southern-central part of Texas, and to a limited extent to the eastern part of Arkansas. There is some Alabama coal comes in there from Memphis.

Q. Now, Mr. Puterbaugh, what are the conditions in a general way, which determine whether the coal from one of these competitive points, or another competitive point, will get the market in question?

A. Well, the character of the coal, the general quality of it, whether it is a smoky, long flame gas coal, or whether it is a smokeless, high carbon coal, and the amount of heat units per pound it contains, and of course primarily the price and the freight rates on which it can be delivered. The delivered price of the coal in proportion to its heat value.

Q. On the principal elements entering into the price are what? What are the principal elements which make
3049 the price of coal in a given market?

A. Well, I presume the cost of production and the freight rate.

Q. Now, as the cost of production in a given field is decreased, what will be the effect of the encroachment, if any, of that coal in the competitive field?

A. As the cost of production is decreased you say?

Q. Yes, sir.

A. Well, a field that is able to decrease its cost of production should be able to expand its market in all directions. If it is able to decrease its cost of production when competitive fields are not able to decrease their costs proportionately, the market for that coal would be expanded a certain number of miles in each direction.

Q. All around? A. Yes, sir.

Q. Were you familiar with the conditions of the coal markets in the past ten years? A. Yes, sir.

Q. I wish you would describe, in a general way, the condition of the coal market as to the general demand as to the price realizable for the sale of coal from 1905 down to the present time, not going into detail, but just in a general way?

Mr. Warrum: The defendants separately object to the evidence sought to be introduced by this question as not tending to throw any light on any of the issues involved in this case.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Q. Will you answer the question, Mr. Puterbaugh?
A. Will you repeat the question?

(Last question read by the stenographer.)

3050 A. Well, you must,—

Q. (Interrupting.) I will ask the question; what condition was the coal market in in the year 1905?

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Q. (Continuing.) Or thereabouts, I do not care about the particular months. I just want to get a general history of the rise and fall of coal for the last ten years.

A. My recollection is that the demand for coal from the period of 1902 until about 1907 was very good. The conditions throughout the country were prosperous at that time and I remember there was considerable more demand than we could supply, especially during the fall and winter months, and following the panic which came in the fall of 1907, if I remember correctly, there was a period of depression and of course every spring, or beginning about the middle of February up until possibly the first of August there is a dull period in the markets and nearly always between the first of August and the first of January or February the demand will be greater than the supply. So that each year has two separate and distinct periods, one of light demand and one of heavy demand, and during that period of light demand the prices are very low in competition—different producers try to get orders; and then, beginning in the fall months, when the domestic demand increases and the railroad demand increases, the prices generally advance rather sharply up to perhaps $1.00 per ton. That is true every year, even in dull years, but my recollection is this, that the years 1907 up until about 1915 you would characterize
3051 as rather dull years, on account of the competition of oil and natural gas, and general quietness in business conditions.

Q. I want you to describe a little more in detail the effect of the competition of oil and gas on the demand and the

realizable price of coal during the period you have spoken of.

A. The effect, you say, of oil and gas?

Q. Yes, how it arose, and what effect it had and why?

Mr. Warrum: The defendants separately renew their objection.

The Court: The objection is overruled.

To which ruling of the Court, the defendants and each of them, at the time duly excepted and still except.

Q. (Continuing.) When did fuel oil and gas start to affect the coal market here?

A. You mean in Arkansas, or the market in which Arkansas coal is sold?

Q. The market in which Arkansas coal is sold.

A. It began to affect it in 1898 or 1899. I think it was when oil was first discovered at Beaumont, Texas and it has continuously and in a large way affected the consumption of Arkansas coal from that time up until, you might say, the last twelve months.

Q. What effect did it have?

A. The price of oil was so cheap that it caused,—it was used by railroads and steam plants as fuel, and being a liquid fuel it could be supplied without the labor of handling, and it was preferred by the railroads, because it enabled them to run their passenger trains without smoke or dirt.

3052 And roughly, I would say that oil, during the period from 1907 to 1916, was supplanting business that would have used perhaps a billion tons more of Arkansas coal and about that same amount of Oklahoma coal.

Q. What were the reasons for the relief which you have mentioned from the depressing effect of this competition of oil and gas after 1915?

A. Well, I would not say 1915 there was very much and the first part of 1916 there was not very much. Oil was rather cheap then. But in the last twelve months oil has advanced in price to where it is not being used nearly so extensively and natural gas is also decreasing as a competitor.

Q. Now, in what way did that affect the price of coal in the coal market?

Mr. Warrum: If the Court please, the defendants separately object to the further examination of this witness on the effect of oil and natural gas in the year 1917.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, then and there duly excepted and still except.

A. The question was what?

Q. In what way did that affect the price of coal in the coal market?

A. Well, the price of coal is of course largely affected by the supply and the demand, and the demand was greatly decreased by the substitution of oil and natural gas for coal, and that naturally left fewer customers for the mines, and, in their efforts to obtain the business that remained, the producers generally in Arkansas as well as in competitive surrounding states made lower prices, and the prices generally ruled lower during the period that oil and gas were such heavy competitors.

3053 Q. Has the coal business in Arkansas, the coal mining and sales, been any more or less profitable business during the last twelve months than in the twelve months preceding 1914?

A. It has been not much more profitable business.

Q. How would you describe the condition of the coal market for the twelve months prior to March, 1914, relative to the prosperity of the coal mining and sales business?

A. You mean was the business prosperous at that time?

Q. Yes.

A. It is hard to pick out a special period like that.

Q. If you dont feel competent to answer it, dont. What purpose was the coal mined by the Bache-Denman mines used for prior to March, 1914? A. For what purpose?

Q. Yes.

A. I would estimate that about one-third of it, possibly not over one-fourth of it, was supplied to the railroads here in Arkansas; but the remaining three-fourths of it, I would estimate that about 60 per cent was supplied in the form of lump and nut coal to domestic trade, largely in the territory including in the states of Kansas, Missouri and Nebraska, with some tonnage to points in Arkansas, like Little Rock. Then the remaining 40 per cent would be in the form of slack or screenings, which moved mostly to points in Arkansas, but still more largely to points in Texas. Texas is the largest market for slack and screenings.

Q. And where were the other markets in which this coal from these mines was sold, so far as you know?

A. Well, I think I have covered about all of it except there was a limited tonnage that moved at times to Minneapolis

and to that country up there; and some tonnage moved to St. Louis, embraced in the state of Missouri which I
3054 mentioned; and occasionally a few cars moved to Memphis, but very few there; and some, but very few, to the state of Oklahoma; and the rest is embraced in the markets which I have mentioned.

Cross-Examination

By Mr. Warrum:

Q. Did you have a contract with the Bache-Denman people for their whole output? A. You say we have?

Q. Did you have?

A. We had a contract under which we sold their coal for them on a commission basis.

Q. Did you agree to take all their coal by the terms of that contract?

A. No, sir, we simply agreed to act in good faith as their sales agent, and that our salesmen would push the sale of their coal, and that we would receive a certain commission per ton for the handling and collecting for the coal that we did sell.

Q. Was the coal billed from these mines by the McAlester Fuel Company?

A. I think not; I think it was billed by their own companies.

Q. Do you remember what kind of a system of bookkeeping you had at each of those mines, have a ledger account with the McAlester Fuel Company, on which invoices were made out in the name of that company, and shipped to the buyers?

A. I know we received separate invoices from each company; each company rendered separate invoices, and we paid each company separately for the coal that it furnished.

Q. And these invoices were kept in your books, prepared by you, and headed McAlester Fuel Company?

A. I dont under stand what you mean by that; we credited each company with the shipment that they made, just as though they had separate management.

3055 Q. My question is, when they made out these shipments, were they made and invoiced by the McAlester Fuel Company or by the Hartford Coal Company or Prairie Creek Coal Company?

A. They made those invoices out against the McAlester Fuel Company at the selling price, less our commission, and the McAlester Fuel Company credited them with the price that they were to receive. Then the McAlester Fuel Company rendered the invoice against its customer at the agreed

selling price, adding its commission to the price credited to the mining company.

Q. Now, when it was billed at the station, Midland or wherever the station might be, was it billed in the name of the McAlester Fuel Company, or the Prairie Creek Coal Mining Company, or Midland Valley Coal Company, or Hartford Coal Company?

A. They were billed by the mining company themselves, as I remember.

Q. You handled coal produced at union mines and non-union mines?

A. We have never made any distinction or inquiry along that line.

Q. They sold at the same price on the market?

A. Yes, sir.

Witness Excused.

3056 B. G. MOORE, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hull:

Q. Your name is B. G. Moore? A. Yes, sir.

Q. Where do you live? A. Drumright, Oklahoma.

Q. Your business is what? A. Post office clerk.

Q. Were you employed by the Bache-Denman Coal Company in 1914? A. Yes, sir.

Q. In what capacity? A. Mine clerk.

Q. At what time?

A. In 1914, part of the time at Coronado mine, and part at No. 4.

Q. Were you bill clerk at Mine No. 4 Prairie Creek in July, 1914? A. Yes, sir.

Q. On July 16th of that year? A. Yes, sir.

Q. I hand you plaintiffs' Exhibit 113, and ask you if you have ever seen that bill of lading before?

A. Yes, sir.

Q. Will you state what that is?

A. It is a bill of lading covering the shipment of a car of coal, it was made on McAlester Fuel Company's order shipped to,—I dont know that I can pronounce it, it is spelled "Natchitoches Electric Light & Power Company" at Natchitoches Louisiana.

Q. That is dated July 16th, 1914?

A. Yes, sir.

Q. Do you remember when that bill of lading was made out? A. On the date shown.

Q. And you took it to the Midland the night of the 16th and had it signed by the railroad agent?

3057 A. Yes, sir, I took it to him that evening.

Q. And in the ordinary course of business that car would have been moved the next day? A. Yes, sir.

Mr. Hull: We offer in evidence plaintiffs' Exhibit 113.

Mr. Neal: We object to the bill of lading for the reason that it shows upon its face that it is to the order of the McAlester Fuel Company, and it does not appear that the McAlester Fuel Company is a party to this suit, or interested in any way in the result thereof.

The Court: The objection will be overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. I will ask you one further question, Mr. Moore. Do you remember how many cars you billed out from Mine No. 4 on the 16th of July? A. One car.

Mr. Hull: That is all.

Mr. Covington: No cross-examination.

Witness Excused.

3058 HEBER DENMAN, recalled for further direct examination, testified as follows:

By Mr. Drinker:

Q. Mr. Denman, I am not certain as to whether you identified certain of these papers. I hand you a paper marked plaintiffs' Exhibit 102, and will ask you to look at it and state whether you know the signatures of the various parties to it, and state what it is? A. I know what this is.

Q. What is it?

A. This is a lease from the Cherokee Construction Company to the Mammoth Vein Coal Mining Company for the property known as our No. 6 mine, and the signatures, I know all the signatures to it. There is Mr. Ingersoll, and Mr. Yarmell,—

Q. You need not describe them all. That is the original paper? A. Yes, sir.

Mr. Drinker: We offer this lease, Exhibit 102, in evidence.

(Exhibit 102, so offered in evidence, is in the words and figures following, to-wit):

Exhibit 102.

This Agreement, made this 18th day of June, 1906, by and between the Cherokee Construction Company, a corporation created under the laws of the Territory or Oklahoma, and the Midland Valley Railroad Company, a corporation created under the laws of the State of Arkansas, which corporations are hereinafter designated "Lessors", of the first part; and the Mammoth Vein Coal Company, a corporation created under the laws of the State of Arkansas, hereinafter designated "Lessee", of the second part, Witnesseth:

3059 That Whereas, on the 26th day of February, 1901, Geo. R. Bishop, and Sarah B. Bishop, his wife, of Sebastian County, Arkansas, as parties of the first part, entered into a contract or lease with one Jerry M. Cravens, of Sebastian County, Arkansas, covering the following described land, to-wit:

The Southeast quarter of Section thirteen (13), Township Five (5) North, Range Thirty-Two (32) West, Sebastian County, Arkansas, except one acre of said land in square form upon which the dwellings and adjoining buildings of the said Bishops are situated, upon which lease Mine No. 6 of the Lessors is situated;

which lease was by the said Cravens sold, assigned, and transferred tc one Geo. T. Williams, and by the said Geo. T. Williams sold, assigned and transferred to the Montreal Coal Company, a corporation, which lease is hereinafter designated as the "George Bishop Lease", and

Whereas, on the same date, Araminta D. Bishop, widoe of R. A. Bishop, deceased, and his other heirs-at-law, entered into a contract or lease with the said Jerry M. Cravens covering the following described land, to-wit:

The Northeast quarter of Section thirteen (13), and the North half of the Northwest quarter and the North half of the Southeast quarter of the Northwest quarter of Section Thirteen (13), Township Five (5) North, Range Thirty-Two (32) West, Sebastian County, Arkansas, except one acre of said land in square form upon which the dwellings and buildings of said Aramainta Bishop are situated;

which lease was by the said Cravens sold, assigned and transferred to one Geo. T. Williams, and by the said Geo. T. Wil-

liams sold, assigned and transferred to the Montreal
3060 Company, a corporation, which lease is hereinafter designated as the "Araminta Bishop Lease;" and

Whereas, on the 26th day of February, 1901, one R. A. Bishop and wife and Mary H. Anderson and husband entered into a contract or lease with the said Jerry M. Cravens covering the following described land, to-wit:

The West part of the Northwest quarter of the Southwest quarter of Section eighteen (18), Township Five (5) North, Range Thirty-one (31) West, lying west of the center of James Fork Creek, containing thirty (30) acres, more or less, in Sebastian County, Arkansas, except one acre of said land in square form upon which the dwellings and buildings of the said Bishops and Anderson were located;

which lease was by the said Cravens sold, assigned and transferred to one Geo. T. Williams, and by the said Geo. T. Williams sold, assigned and transferred to the Montreal Coal Company, a corporation, which lease is hereinafter designated as the "Robert Bishop lease," and which lease has been practically worked out, but on which is situated the mouth of Slope No. 5 of the Lessors through which coal is taken from said "George Bishop lease;" and

Whereas, the Lessors herein became the purchasers of all of the property and franchises of the Montreal Coal Company, which corporation was afterwards dissolved, and are therefore the owners of the coal leasehold interests under the three leases above described, which were acquired for the purpose of aiding the construction of the line of railroad of the Lessors by giving said line of railroad the benefit of the tonnage from said coal lands; and

Whereas, the said "Araminta Bishop lease" is involved
3061 in a suit for the forfeiture and cancellation of the same in the Chancery Court of Sebastian County, Arkansas, Greenwood District, for an alleged failure to work the same and an alleged failure in the payment of royalty, the outcome of which suit the Lessee is willing to assume; and

Whereas, said Lessee desires to take over and operate said leases and are willing to take said "Araminta Bishop lease" subject to the outcome of said suit, which suit the Lessors agree to defend in Court and defeat if possible;

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

1. The Lessors, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the Lessee to be paid and performed, have and do hereby sell, assign, transfer and quit claim to the Lessee all rights which they have under said leases, for the period of ten (10) years from this date, subject to the outcome of said suit as to the "Araminta Bishop lease;" and for the same consideration the Lessors have and do hereby lease to the Lessee their said Mines Nos. 5 and and 6 located on said land, together with the entire plant machinery, tools and forty-eight (48) miners' houses as the same now stand on the East half of the Southeast quarter of Section twenty-four (24), Township Five (5) North, Range Thirty-two (32) West, and numbered from 601 to 648 inclusive, including the right to use said miners' houses in connection with the mining of coal on said leases for the period of this agreement, with the right to use the two north rooms of the office of the Lessors at said town of Midland; a schedule and inventory of said property is attached hereto as exhibit "A" and made a part hereof.

2. The Lessee covenants and agrees to push the entry
3062 connection from the mine on the lease above described known as the "George Bishop lease" to a connection with the second lease above described known as the "Araminta Bishop lease" to completion as early as possible, and to mine sufficient coal from said "Araminta Bishop lease" to comply with the terms and carry out the provisions of said lease, and of all of said leases, as to the working of the same.

3. The Lessee covenants and agrees to pay the Lessors a royalty of fifteen (15) cents per ton on all coal mined from said lands, which royalty shall be on the basis of a minimum tonnage of twenty-five thousand (25,000) tons for the first year of this agreement, this to be increased yearly to the extent of twenty-five hundred (2500) tons per year until a minimum tonnage of thirty-seven thousand five hundred (37,500) tons is produced per year, which minimum of thirty-seven thousand five hundred (37,500) tons shall then be maintained by the Lessee, or its assigns, until the expiration or termination of this lease or until the workable coal is exhausted by ordinary mining methods.

The Lessors agree to furnish the Lessee railroad cars at the tipple of the Lessee in sufficient numbers so that the said Lessee shall be able to operate its mine not fewer hours per month than ninety per cent (90%) of the hours per month the mines are operated of any other person or corporation on the railroad of the Lessors, including the mines of the Lessors. Cars

of foreign roads shall be held to apply as well as home road cars. It is agreed that in case the car supply so apportioned to these mines is insufficient to carry the minimum tonnage for any one year, a pro rata reduction shall be made in
3063 the minimum tonnage; provided, however, that under no circumstances shall this be below the amount of twenty-five thousand (25,000) tons, as shown by the records of the Lessors. The obligation, however, to produce this minimum tonnage shall be subject to abatement in case of strikes, abatement from such cause to be apportioned to the length of the strike.

3. The royalty herein provided for of fifteen (15) cents per ton shall be paid upon the minimum tonnage provided for quarterly in advance, and shall be paid within ten (10) days after the beginning of the quarter; and the royalty at the rate of fifteen (15) cents per ton on the excess, if any, over said minimum tonnage herein provided for, for any previous quarter, shall be added to the advanced minimum royalty for the next succeeding quarter, and a separate and distinct settlement shall be made for each quarter. Should the amount of coal mined in any one year not amount to the minimum tonnage herein provided for, it is agreed that the Lessee shall have the privilege of mining during the next succeeding years such a quantity of coal in excess of the minimum tonnage required for that year as will make up the deficiency for the previous year without paying any excess royalty thereon for that year.

5. The Lessee covenants and agrees that the mines on said lands shall be worked continuously so far as the general demand for coal warrants; that is to say, that they shall be worked the same as other average mines controlled by the Lessee or by other operators on the line of the Midland Valley Railroad.

6. In the event of coal not being mined up to the minimum in any one year, it is agreed by the Lessors that the Lessee herein shall be allowed to mine free of royalty in the next succeeding year only sufficient coal to make up the amount
3064 of minimum royalty paid in excess on coal mined during the preceeding year.

7. The Lessee agrees at the termination of this lease or agreement to return the plant and property pertaining to said mines and leases to the Lessors in as good condition as when received, reasonable tear and wear excepted.

8. In the event of the Lessee installing additional boilers, steel rails or pit cars during the period of this lease of agreement, they shall at the termination of this lease be paid for by the Lessors at their cost price, not including laying or installation, less depreciation at the rate of ten per cent (10%) per annum, it being agreed that the Lessors shall not pay for any such improvements unless they have been specifically authorized by said Lessors before being put in the mine, and the cost of the same determined and agreed on; Provided that if the Lessee desires the installing of any boilers, steel rails or pit cars, for the installation of which the Lessors will not give their consent, the Lessee shall have the right to install the same and shall have the right to remove or dispose of the same at any time, provided that such removal does not impair the mining capacity of the mines below the minimum tonnage provided for herein.

9. It is agreed by and between the parties hereto that no coal shall be shipped from Mine No. 5 on said lands via the St. Louis & San Francisco Railroad without the consent and agreement of the Lessors.

10. The term of this lease shall be ten (10) years from this date, and there shall be no vacation of this lease before the end of said period except by agreement between the parties hereto; Provided that the Lessee may terminate
3065 this lease or contract at any time upon six (6) months notice in writing to the Lessors and paying the Cherokee Construction Company the sum of Ten Thousand Dollars ($10,000.00) in cash money as an absolute forfeit and as liquidated damages for the termination of the contract.

11. The said Lessors hereby retain and reserve the right, and the Lessee hereby covenants that the said Lessors shall have the right, by their officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect, examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessors, not less frequently than once in six months, with an accurage copy of said map.

12. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish

this end, among others, the Lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of assuring this end to the Lessors with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the
3066 demised premises towards which any of the said entries, gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by any first-class mining methods, or until the Lessors give their consent in writing to the abandonment of any of the same. And the Lessor agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first-class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between then and the boundary of the demised premises is mined out.

And it is further expressly agreed that the Lessee shall conduct no stripping operations on the coal beds hereby demised without the written consent of the Lessors being first had, and that the Lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the outcrop of the coal bed.

That the Lessee shall maintain all buildings and machinery, and other appurtenances to the mines, in good condition and working order, and keep the same properly insured against fire; (See attached clause to be added):

"Amendment to Insurance Clause in Lease Contract Cherokee Const Co to Mammoth Vein Coal Co. of date June 18 1906. As agreed to by Mr. F. Bache—H. E. Yarnall—H. E. Y. Letter 11 19-06.

3067 "And will reimburse Lessors annually for fire insurance premiums paid by the Lessors for insurance cov-

ering the mine buildings and contents thereof, not including miners' houses. The amount of insurance to be carried on each building to be the same as is now carried, unless varied from by mutual consent; the premiums not to exceed those paid for similar insurance by the Lessees. In the event of any loss by fire of buildings or contents, covered by such insurance, the Lessees shall replace or repair the damage with reasonable promptness, and shall be reimbursed therefor by the Lessor to the extent of the insurance on the destroyed or damaged property. Such reimbursement to be affected by the Lessee deducting from the next royalties due the Lessor the amounts of such insurance. Provided said amounts have not already been paid to the Lessee."

that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference either with the use by the said Lessors of the surface covering the coal hereby leased, excepting that surface hereby demised, or with land of the said Lessors bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessors now have standing or may hereafter cause to be constructed on the said surface or bounding lands.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and from dangerous gases.

13. The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the
3068 State of Arkansas regulating the mining of coal, and agrees to protect the Lessors against the violation of said laws by said Lessee.

14. As a part of the consideration for this lease the said Lessee hereby convenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said Lessors and each of them from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mines and to assume all the legal liability of an independent operator or contractor.

In consideration of the premises and as an inducement to the said Lessors to make this agreement, and to build said line of railroad and furnish the necessary spurs, side tracks

and switches at the tipple the said Lessee for the accomodation of the Lessee in the handling of its business, said Lessee hereby agrees that the said Lessors, their successors and assigns, shall not be liable for or on account of any loss or damages which may at any time in any manner arise to the said Lessee or its assigns, by reason of fire communicated to the buildings of said Lessee or its assigns, now erected, or hereafter to be erected, or the contents thereof, or to the property of any kind owned or stored by said Lessee along such side tracks, spurs or switches, by the locomotives, trains or cars of the Lessors, their successors or assigns, or arising in any manner from the operation of such side tracks, or switches, and to that end the said Lessee and its assigns will make no claim against the Lessors, their successors or assigns, for any loss, damage, charge or expense of any kind that may grow out of any fire set or communicated by the locomotives, trains, or cars of the Lessors upon or
3069 along said railroad, spurs, side tracks or switches.

15. The said Lessee further convenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or transfer the same or any part thereof, or sub-let or demise the said premises or any part thereof, to any person or persons or corporation whatsoever, without the written consent of the said Lessors, under their seals, first had and obtained; but said Lessee may contract necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that puppose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee.

16. And the said Lessors, if they so elect, shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee convenants that the said Lessors may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the sales on which the coal and coke are weighed either by said Lessors or the said Lessee, then such disputes shall be settled by testing the said scales by government weights.

The said Lessee further convenants and agrees to furnish within five (5) days from the last day of every calendar month, at the office of the Lessors on the form furnished by the Lessors for that purpose, a report properly authenticated, showing the coal mined or dug and used or removed from the said mine during the preceding calendar month;

and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall
3070 be ascertained, an account rendered for the same and payment made at the rate above named. And the Lessee convenants that it will keep a book or books of account of the mining and shipping of coal and coke, and that said book or books shall be open to the inspection of said Lessors and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

17. The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

18. Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operations, and any other matter herein specifically referred to arbitrators, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between the parties hereto touching any matter or thing to be done and performed by either hereunder, the same shall be determined by arbitration in the following manner: The party alleging such nonperformance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to act hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus
3071 appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Circuit Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

19. The said Lessee hereby covenants and agrees to ship all coal and coke mined from or made upon the demised premises to or towards its market or destination by the railroad of the Lessors and such connecting line or lines as the Lessors shall prefer and select for this purpose, and to more fully effectuate this the said Lessee does hereby grant to the said Lessors and to their successors and assigns, the right to consign or route all coal and coke so mined and made and delivered to said Lessors for shipment by said Lessee by whatever line or lines of railroad the said Lessors, or them successors or assigns, may prefer or select; Provided always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided further, that the initial carrier for all such coal and coke shall be the said Midland Valley Railroad Company, or its successors or assigns, and the said Lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said Lessors, their successors or assigns, as liquidated damages, for a breach of contract, the sum of twenty-five (25) cents in the case of coal and forty (40) cents in the case of coke.

3072 20. It is further covennted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessors shall, at their option, after sixty (60) days' notice, to the Lessee have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation.

21. All of the covenants and agreements, terms and conditions of this lease and contract shall inure to the benefit of, and be binding upon, the successors and assigns of the Lessors, and the successors and assigns of the Lessee, and each of them.

In testimony whereof, the Lessors and Lessee have caused this instrument to be executed by their proper officers, thereunto duly authorized, and attested by their cor-

porate seals, under authority of their respective Boards of Directors, this the day and year first above written.

CHEROKEE CONSTRUCTION COMPANY,
By C. E. Ingersoll President

Attest:
H. E. Yarnall,
Secretary

MIDLAND VALLEY RAILROAD COMPANY,
By C. E. Ingersoll, President

Attest:
H. E. Yarnall,
Secretary

Lessors,

MAMMOTH VIEN COAL COMPANY,
By F. Bache,
President.

Attest: Heber Denman
Secretary.

Lessee.

3073 Commonwealth of Pennsylvania
County and City of Philadelphia—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioner and acting within and for said City of Philadelphia, C. E. Ingersoll, Vice President, and H. E. Yarnall, Secretary of the Cherokee Construction Company, a corporation, to me personally well known to be such President and secretary, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth.

And on the same day came before me, the undersigned. C. E. Ingersoll, President, and H. E. Yarnall, Secretary, of the Midland Valley Railroad Company, a corporation, to me personally well known to be such President and Secretary, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth.

Witness my hand and notarial seal, this the 18th day of June, 1906.

OSCAR H. PRICE,
Notary Public.

(Seal)

My com. exp. February 2, 1910.

State of Arkansas,
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, F. Bache and He-
3074 ber Denman, to me personally well known to be the President and Secretary, respectively, of the Mammoth Vein Coal Company, a corporation, and acknowledged to me that they had executed the foregoing instrument as such President and Secretary for and on behalf of said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth, and I do hereby so certify.

Witness my hand and notarial seal, this the 15" day of May, 1906.

(Seal) RANSOM GULLY, JR.
Notary Public.

My com. exp. May 20th, 1908.

Certificate of Record

State of Arkansas.
County of Sebastian,
Greenwood District.

I, John E. Tatum, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 26 day of December A. D. 1906 at 6 o'clock P. M. and the same is now duly recorded with the acknowledgments and certificates thereon. "Record Book 38 Page 109.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 29 day of Dec. A. D. 1906.

(Seal) JOHN E. TATUM,
Circuit Clerk and Ex-Officio Recorder.

By R. A. Harper Deputy Clerk.

Inventory of property
Owned by the Cherokee Construction Co.,
to be leased to

3075 The Mammoth Vein Coal Co.

Mine No. 6 (outside)

1 shaft tipple, including 1 shaker screen, 1 weigh basket, 2-5′ sheave wheels. (Shaker screen fitted with perforated sheets, flat shseets, 12 diamond screen bars 5′ long and 1 chute.)

Weigh Room.

1 Fairbanks Scale.

1 Radiator, with following fittings.

8′-1¼″ pipe.

13′ 1″ pipe.

1-1″ globe valve.

2-1″ nipples.

2-1″ ells.

1-1¼″ union.

1-1¼″ ell.

Coal Chute Trestle.

565′-16# rail. (Trestle, 5 pockets, 1 platform scale, #1 dump car, owned by M. V. R. R. Co. and not to be included in inventory.)

Rock Trestle.

265′ rock trestle.

530′-12# rail (old).

2 flat sheets 6′x8′x¼″.

1 " " 5′x5′x¼″.

2 pairs of goose necks. (12# rail)

1 frog and switch.

In Hoisting Shaft.

500′-1″ hoisting rope (2 years old).

2 self dumping cages.

120′-2″ pipe.

2-2" ells.

3076 1-2" teel.

1-2" plug.

107'-1½" pipe.

1 circle jet.

1-1½" globe valve.

1 reducer, 1¼x1½".

On Ground.

1 Crescent Iron Works, Shaker Engine.

1-½ pint lubricator.

8'-½" pipe)

47'-1¼" pipe.)

95'-1½" pipe.)

2-1¼" globe valves.) Steam line to

2-1½" " ") shaker engine

1-1¼" union.)

1-1¼" tee.)

1 reducer, 1½"x1¼".)

2-1½" ells.)

2-1½" tees.)

1-1½" union.)

218'-12# rail (old) boiler slack track.

150'-12# rail (nearly new) repair track.

1 Fairbanks track scale, 42' long, and weigh house 6'x10'.

250' signal wire with levers.

Boiler House

1 boiler house 28'x42'.

2 Crescent Iron Works boilers, 75 H. P. each, with fitgings complete, for supplying steam to hoisting engine, fan, pumps, shaker engine, and radiator.

2-60′ stacks.

3077 2 coal shovels.

1 boiler slack car.

1 hoe, 1 rake, 1 poker,

1 iron wheelbarrow,

1 flue cleaner and rod.

1 whistle.

One Mocking Bird Whistle bought by M. V. Coal Co., $25.00

1-2″ Pemberthy injector #291635.

Engine House.

1 engine house 18′x30′. Shingle roof.

1 pair second motion Litchfield hoisting engines, size 12″x20″, with fittings complete for hoisting.

1-5′ hoisting drum.

1-9″ signal bell.

1-6″ " "

1-1 pint Detroit lubricator.

1 steam guage.

1 copper oil can.

1 small heating stove, and 6 joints pipe.

1 telephone, and line to M. V. R. R.

6 guage glasses ½″x12″.

1-4″ monkey wrench.

2 pairs pipe tongs.

2 safety lamps (Clamney and Davey).

Blacksmith Shop.

1 Blacksmith shop, 28′6″x32′-6″. Shingle roof.

1 pit car (1 end and 1 side gone).

2 pit car axles.

2 " " wheels. (old)

2 engine templates (wood).

Fan House.

1 fan house 14'x31'.

3078 1 fan complete, size 4' x 18'

1 fan engine complete, including lubricator, and all connections necessary for running fan.

Oil House, etc. in Yard.

1 oil house 6' x 8'. 1 tin oil pump.

1 mule shed 10' x 40' shingle roof.

1 frame powder house 6' x 8' shingle roof.

1 corrugated iron powder house, 14 x 18.

1 mule lot, 4 wires; size about 150' x 150'

1 small pond.

1 small upright boiler, including stack, 1 steam guage and 1 injector (located James Fork Creek, near Quinleys strip pit)

1 old wooden water tank.

86' 1¼" pipe (loose)

18' 2" " "

Jet Line, Boiler to Johnson Cr.

196'-1" pipe.

236' 1¼" pipe.

268' 1½" "

35' 2" "

1 Blakeslee jet, 2" suction, 1½" discharge.

4-1" unions

3-1¼" unions

1-1½" "

4-1" ells

7-1" tees

1-1¼" "

1-1" globe valve

1-1" angle globe valve

1-2" union.

3079 1-2" tee

1-2" nipple

1-2" plug.

2 bushings 1" x 2"

3 " 1½" x 2"

2 " 1" x 1¼"

Discharge Line, Air Shaft to Pond.

37'-2½" pipe

141' - 2" "

1-2" union

1-3" plug

1-3" nipple

1-3" ell

1 bushing 2½" x 2".

1 " 2" x 3".

1 bowl reducer 2" x 3"

Steam Lines to Fan, Pumps, and Engine. (outside)

368'-2" pipe.

10'-1½" pipe.

50'-4" pipe.

1-1½" x 2" tee reducer.

1-1½" ell.

1-1½" nipple.

1-1½" x 1" bowl reducer.

1-1" globe valve.

2-2" flange unions.

6-2" ells

1-2" tee

1-2" globe valve.

Inside of Air Shaft.

90'-2" pipe (discharge small pump)

3080 105'1½" (exhaust large pump)

108'-3" pipe (discharge to large pump)

90'-2" (steam line to pumps)

Water Line to James Fork Creek.

12951 2" pipe.

Inside.

1 Fairbanks Morse and Co. pump#3875, size 7 x 4½ x 10.

1 " " " " " (#gone) " 6 x 4 x 5

1 Worthington pump #126790, 152 x 152, size 6 x 4 x 6

1-lubricator ¼ pint.

93'-3" pipe (suction)

55'-3" " (discharge)

117 1½" pipe (steam and exhaust)

98'-2" " (steam and discharge)

2" " (suction)

4'-1" " (steam)

1 bushing 1½" x 1"

1 bushing 3" x 2"

1 " 1½" x 2"

1 bowl reducer 4" x 3"

1 nipple 4"

3 " 3"

3 " 2"

3 " 1½"

1 " 1"

2 flanges 3"

1 " 2"

3 ells 3"

2 ells 2"

3 " 1½"
3081 2 plugs 2"
2 tees 2"
1 " 1½"
2 unions 2"
2 " 1½"
1 " 1"
1 globe valve 1½"
1 " " 1"
1 wooden reel (mounted) and about 20 yards of small copper wire
1 monkey wrench 18"
1 " " 16"
1 pair pipe tongs 18"
17125'-12# rail
79 frogs
76 switches
1 double cross-over switch
7 switch rails
1 tie fork
1 crimper
1 spike maul.
1 " lifter
305'-2" pipe.
1 water car.

Pit Cars Inside and Outside.

51 pit cars in running order
3 " " badly broken.
54 " " total

Tipple.

1 slope tipple.

1 bar screen 6 x 6

3082 1 double cross-over switch.

2 frogs and switches.

140′ rock trestle.

710′-12# rail (old)

1 5′ sheave wheel.

1 small heating stove.

1 Fairbanks tipple scale.

1 pair goose neck dump.

1 test weight.

1 old Tornay oiler.

In Yard and Under Tipple.

63′-12# rail (loose) old.

1 reel of old hoisting rope (good only for guy rope)

1 mile lot, about 100′ x 100′, 4 wires

1 vise.

1 iron chute (not in use)

1 smoke stack, 24″ diam., 28′6″ long (not in use)

Engine House.

1 Pratt hoisting engine, complete for hoisting, 7″ x 14″

1-3′ hoisting drum.

300′ ⅝″ hoisting rope (3 years old)

1 lubricator.

1-6″ signal bell.

Blacksmith Shop.

1 blacksmith shop 10′ x 12′.

1 bellows (leaks)

0 forge)wood)

1 anvil

1 vise.

1 cleaver.

2 hammers.

3083 1 pair tongs.

1 pinch bar (point broken)

Boiler House.

1 boiler house 22′ x 26′. shingle roof.

1 Chandler and Taylor boiler and stack (24-2″ flues)

1 crescent locomotive style boiler and stack, 60 H. P. (56-2″flues.

1 hoe.

1 garden hoe.

1 poker.

1 iron wheelbarrow.

1 Fairbanks Morse and Co. pump; #3829; size 3 x 2 x 4 (considerably rusted) no good.

Fan House.

1 fan house 14′ x 20′

1 fan 4′ x 12′

1 Ketcham horizontal fan engine.

1 rubber belt 9″ x 18′ (old)

Oil House.

1 oil house 8′ 6″ x 10′

1 patent Enterprise oil pump.

Boilers and Engine Connections.

25′-¾″ pipe.

60′-1″ pipe.

12′-1″ pipe.

36′-1¼″ pipe.

6-¾″ globe valves.

2-1" " "

1-¾" " "

1-¾" union. 5-¾" ells.

1-bushing ¾" x 1"

4-1" unions.

3084 1-1" tee.

2-1" ells.

2 bushings ¾" x 1"

1 " 1½" x 1¼"

1 " 1¼" x 1"

3 " 2" x 2½"

2 ells 1"

1 " 2"

1 bowl reducer 2" x 1½"

5 nipples 1"

5 " 2"

1 cross tee 2"

1 union 2"

1 globe valve 2½"

2 " " 2"

1 steam guage.

1 whistle 2"

1 Garfield double jet.

Pipe Lines to Drill Hole, Fan, Pond and Well, and Fittings

812'-2" pipe

482'-1 1.2" pipe

158'-1¼" pipe.

120'-1" pipe.

3 bushings 1½" x 2"

2 " 1½" x 1¼"

1 " 2" x 3"

4 tees 2″

2 ″ 1½″

5 ells 2″

5 ″ 1½″

3085 4 nipples 2″

4 ″ 1¼″

1 ″ 1½″

1 ″ 3″

1 union 2″

3 ″ 1½″

1 globe valve 1½″

2 ″ ″ 2″

1 flange 1¼″

1 pond.

Inside.

11915′-12# rail (old)

58 frogs.

53 switches

7 switch points.

1-5″ signal bell and 200′ bell wire.

1 Leckie upright hoisting engine, size about 6″ x 12″, friction geared, 18″ iron drum, and fitted complete, (for hoisting coal from Main West entry to Slope, in Mine No. 5) with steam and exhaust lines, valves etc. (steam connection to pipe line in drill hole).

1- ½ pint lubricator, on engine.

About 700′ of ⅝″ hoisting rope, on engine drum (rope deteriorated about 75% from original cost value)

1 iron track guage.

Pit Cars.

(inside and outside)

35 pit cars, in good order

13 ″ ″ needing repairs

48 " " total, at mine 5.

Mine equipment stored at Midland.

3086 8 sets pit mule harness.

3 sinking picks.

1 bellows (holes in leather).

4 tail chains.

8 mule collars (for pit mules).

5 perforated screen sheets 4′ X 6′ (shaker screen fittings).

1 " " " 2½″ X 6′ " " "

3 pairs blacksmith tongs.

1 Smith igniting dynamo.

1 Blackeslee circle jet.

Office.

2 rooms (the North and West rooms) of The Cherokee Construction Co. office building, located on The Midland Valley R. R. right of way, at Midland, Arkansas.

1 stationery standing desk, 24′ long, containing 2 cash drawers, 4 common drawers, shelving and [copboards].

1 movable standing desk, 6′ X 2½′, fitted with 9 drawers, and 1 cupboard.

1 movable cupboard, 2′ X 4′ X 6′, fitted with shelves and pigeon holes.

1 stationery desk-cupboard, 1½″ X 4′ X 5′

1 " cupboard, 5′ 6″ X 1′ 4″, fitted with shelves and pigeon holes.

1 table, 3′ 6′

1 copying press, 18″ X 22″

1 copying press table.

1 wringer and tank

1 wash bowl and pitcher.

1 iron combination safe, size outside, 2′-5″ deep X 3′-4″ wide X 3′ 8″ high: manufactured by Harrigan Safe
3087 and Iron Works, Kansas City.

1 heating stove, 5′-6″ high, with 7 joints of stove pipe.

1 heating stove, 3'-6" high, with 4 joints of stove pipe.
3 office arm chairs
1 revolving arm chair.
1 wash basin (granite iron)
1 dipper " "
1 slop bucket " "
1 cuspidor " "
1 telephone and connection to line on M. V. R. R.
2 lamp brackets.
1 galv. iron pay-envelope box.

Dwelling Houses.

8-2 room houses Nos.	Remarks
611	
617-2	window lights broken.
621	roof leaks, floor gone: Good for lumber only.
634-1	window light broken.
643	
644-5	window lights broken.
645-2	" " "
464-1	" " "

28-3 room houses, Nos.

604		
605		
606-3	window lights	broken.
607-2	" "	"
609-		
610-5	" "	"
612-10	" "	"
3088 613-10	" "	"
614-8	" "	"
615-7	" "	"
618-1	" "	". 1 door panel broken.
619		
622-1	" "	"
626		
627-4	" "	"
628-12	" "	"

629-13 " " " 1 door panel broken.
630-17 " " "
631-5 " " "
632-7 " " "
633-2 " " "
635-3 " " "
636-3 " " "
637-2 " " " 1 door panel broken.
638-10 " " "
640-1 " " "
641-7 " " "
642-4 " " "

10-4 room houses, Nos.

601-4 window lights broken.
603-7 " " " 1 door panel broken.
608-3 " " " 1 door panel broken.
620
623-14 " " " 1 door panel broken.
624
625
639
3089 647-15 " " "
648-5 " " "

1-5 room ho. No. 616-3 window lights broken, Rear portion of house, settled away from front portion.

1-10 room ho. No. 602-4 window lights broken.

Inside House No. 602.

5 wooden bedsteads and 2 sets bed springs.

We, the undersigned, hereby certify that the accompanying inventory, as noted, is correct, and that all the items noted therein are correctly represented.

Signed in duplicate this Thirteenth day of June 1906.

MAMMOTH VEIN COAL CO.
By H. Denman Secy & Treas.
CHEROKEE CONSTRUCTION CO.
By Jas P Gallager Mine Eng.

Q. I hand you paper marked plaintiffs' Exhibit,—

Mr. McDonough (interrupting): It may be considered in testimony, without being read at this time?

The Court: Yes, it may be considered as read, and then either party can refer to any portion that they may desire.

Q. I hand you a paper marked plaintiffs' Exhibit 103, and will ask you what that is?

A. This is an agreement by which the Mammoth Vein Coal Company can take the coal from the McKitchin land through No. 6 track, and tipple, at a toll of 2 cents a ton.

Mr. Drinker: We offer Exhibit 103 in evidence, and it may be considered as read.

The Court: It will be received.

(Exhibit 103, so offered in evidence, is in the words and figures following, to-wit):

3090 Exhibit 103.

This Agreement entered into this twenty sixth day of June A. D. 1909 by and between the Cherokee Construction Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth

That Whereas the party of the first part is the owner of the coal mine and coal property in Sebastian County, Arkansas, known as Mine No. 6, and the party of the second part is the owner of a lease adjacent thereto known as the McEachin Lease.

Now Therefore the parties hereto enter into the following covenants and agreements to-wit:

1. That the party of the first part grants to the party of the second part the right to ship the coal mined and taken from said McEachin Lease over the tracks and tipple of said No. 6 Mine for a charge or toll of two (2) cents per ton to be paid by the party of the second part to the party of the first part for the use of such facilities, which toll of two (2) cents per ton the party of the second part agrees to pay to the party of the first part for every ton of coal thus shipped, payable quarterly on bills rendered to the party of the second part by the party of the first part.

Witness the hands and corporate seals of the parties hereto in duplicate, each an original, the day and year first above written.

(Seal) CHEROKEE CONSTRUCTION COMPANY
By C. E. Ingersoll Vice President.
Attest: H. E. Yarnall Secy.

(Seal) MAMMOTH VEIN COAL COMPANY
By F Bache Pres.
Attest Heber Denman Secy.

3091 Q. I hand you paper marked plaintiffs' Exhibit 104, and will ask you what that is?

A. This is the McEachin Lease, made by the McEachin Heirs to the Missouri Coal Company.

Mr. Drinker: I offer Exhibit 104 in evidence, and it may be considered as read.

The Court: It will be received.

(Exhibit 104, so offered in evidence, is in the words and figures following, to-wit):

Exhibit 104.

Lease

This Contract And Agreement made and entered into this the 1st day of May, 1907, by and between Mrs. Belle McEachin, widow of D. A. McEachin, Deceased, and Lula S. Howe, R. A. McEachin and Norma McEachin, his wife, Fanny B. Lake, Pearl Douglass, Ruby Ingram and Wm. D. McEachin, an unmarried man, heirs at law of D. A. McEachin, Deceased, parties of the first part, and the Missouri Coal Company, a corporation, organized under the laws of the State of Missouri, party of the second part,

Witnesseth:

That the parties of the first part for themselves, their heirs and executors, administrators and assigns, in consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and for the further consideration and covenants hereinafter mentioned, have leased and do hereby lease and let to the party of the second part, its successors and assigns the following described lands for

the purposes hereinafter mentioned, situated in Sebastian County, Arkansas, to-wit:

The West part of the Northeast Quarter, Section 24, Township 5 North, Range 32 West, containing 152 acres, more or less, which includes all of the Northeast Quarter of
3092 said section, except two acres held and occupied by Mr. Olive Church and Cemetery, and six acres off of North East corner on East side of James Fork Creek,

With the sole and exclusive privilege of mining for coal and operating coal mines thereon and taking and selling coal therefrom, for the term and period of thirty years from this date, for the consideration aforesaid, the privilege to take sufficient coal out of said premises for stationary machinery necessary for conducting said mining operations free of charge, said party of the second part to correctly weigh and make daily report on daily miners bulletin of all such coal used subject to approval of parties of the first part, when deducted from total output of coal during the month;

Said parties of the second part shall have the right free of charge, to take from said premises all such timber and stone as may be necessary to be used in construction and maintaining said mining business;

That is to say, all of such material as may be necessary to be used in constructing and maintaining said mine or mines, but not to include such timber as is used in building houses, tipples, railroad ties, railroad bridges, and all timber so used for said purposes, shall be paid for at the price of two dollars ($2.00) per thousand feet, standard measure.

And said parties of the second part, shall also for the consideration aforesaid, have the right to erect on said premises all necessary buildings for the purpose of carrying on said coal mining business, including dwellings for miners and other employees of said party of the second part, and said party of the second part, its successors or assigns, shall have the right to build and main-
3093 tain roads and railways to and from all shafts, slopes, or strip pits now on said premises, or that may hereafter be put thereon for the use of said mine or mines, and said parties of the second part, its agents, successors, or assigns, shall fence all the aforesaid railroad tracks and build and maintain suitable stock gaps thereon; and it is further understood and agreed that said party of the second part, or its legal representatives, shall build and maintain gates on all dirt roads made by them as aforesaid,

when said roads enter upon any of the enclosures of said parties of the first part.

It is further understood and agreed that the parties of the second part is to pay all taxes on improvements placed on said premises by the said second party, and the taxes on the realty to be paid by the party of the first part,

It is further understood and agreed that the said parties of the second part, its successors or assigns, shall pay to the parties of the first part, the following royalties, to-wit:

For all mine run coal per miners' bulletin weights, said bulletin weights to include in addition to coal mined by contract, all coal mined and loaded out by company employees and known as "Company Coal", which shall be run on a check number the same as contract coal, eight cents per ton of two thousand pounds, miners' bulletin weights to govern in settlement;

The minimum royalty to be One Thousand Dollars per year for each and every year during the period of this lease, or until the coal that is minable by ordinary mining methods is exhausted and should all of said coal that can be mined from said lease, by ordinary mining methods be exhausted before the expiration of the term of this lease, then the said minimum royalty shall cease.

Said yearly minimum royalty during the life of this
3094 lease shall be paid in twelve (12) equal payments of
eight three and 33 1/3/100 dollars ($83.33 1/3) beginning May 1st, 1907, and payable on or before the first day of each succeeding month until said minimum royalty is paid;

Provided, said second party, its sucessors or assigns shall have mine or mines, shaft or shafts, in operation on said premises mining and taking coal therefrom, then said royalties shall be paid as hereinafter provided.

In case the royalty on coal mined in any one year shall exceed the sum of One Thousand Dollars, minimum royalty herein referred to, then so much of said over plus as shall be necessary, shall go to the chedit of the party of the second part to reimburse them for any dead or advanced royalty they may have paid in any previous year in which the actual royalty amounted to less than One Thousand Dollars.

The royalties as aforesaid are to be paid on the 20th day of each month for coal mined the previous month and in the event that said royalties are not paid as aforesaid, within ninety days from date it comes due, the said parties of the sec-

ond part, its successors and assigns, shall forfeit this lease and all privileges thereunder, and no improvements or other machinery shall be removed from said premises or disposed of by said parties of the second part, its successors or assigns, until said royalties are fully paid.

It is expressly understood and agreed that said parties of the first part, or their legal representatives, shall have the first lien upon all said improvements, and machinery that are now upon said leased premises, or may hereafter be put thereon by the said parties of the second part, its successors or assigns, until royalties herein provided for are fully
3095 paid.

Said parties of the second part, its sucessors or assigns shall furnish the parties of the first part, of their legal representatives, a statement on the 15th day of each month of all coal mined the previous month, said statement to be made upon miners bulletin weights, said bulletin weights to include in addition to coal mined by contract all coal mined and loaded out by company employees and known as "Company Coal", which shall be run on a check number, the same contract coal, and the parties of the first part or their legal representatives, shall at all reasonable hours, have access to the weigh books and other records of the coal mined and kept in its office.

It is further understood and agreed by the parties hereto that coal shall be mined from the above described premises, by the party of the second part, its successors or assigns, with due diligence, and at no time during the period of this lease shall the party of the second part, its successors or assigns, discontinue the removal of said coal from the above described premises for more than thirty consecutive days in any one year, unless the same is caused by strike, labor troubles, shortage of cars, floods, explosions, fires, shortage of orders, or other unavoidable circumstances, not within the power of the parties of the second part, its successors and assigns, to prevent.

It is further understood and agreed that all the openings of the mines, shafts, or slopes, are to conform to the mining laws of the state of Arkansas, and no shaft, or other openings shall be sunk into the coal veins at any point on the above mentioned tract of land that is subject to or liable to overflow, from high water in James Fork Creek, or to connect with any mine or mines subject to, or liable to overflow from high water in James Fork [Creem,] nor shall any en-

tries or entry, tunnel or tunnels be driven under
3096 James Fork Creek to connect with any mines or mine subject to, or liable to overflow from high water in James Fork Creek, provided that this restriction will be withdrawn and considered of no effect upon the execution by the party of the second part in favor of the party of the first part of a good and sufficient bond in the sum of Ten Thousand Dollars to indemnify and make safe from all loss that might be occasioned by the overflow and flooding of said mine or mines as the party of the second part sees fit to open on said premises, and that at least two plats of said mines, shaft, or slopes, shall be made by the parties of the second part, its successors or assigns, and one furnished to the said parties of the first part or their legal representatives, and the said party of the second part, its successors or assigns, shall, in operating said mine, shaft, or slope, strictly conform to the laws of the United States and the mining laws of the State of Arkansas.

It is further understood and agreed that the party of the second part, its successors or assigns, may, at such times as it may deem best, move or cause to be moved, any buildings, machinery, railroad tracks or other material which it may have put upon said premises, without force or process of laws; provided, however, that the royalties have been fully paid as aforesaid. It is understood and agreed by the parties hereto that the said parties of the second part, its successors or assigns, shall have the right to sublet said premises for the purposes of mining said coal as aforesaid, subject to all the conditions of this lease.

It is hereby agreed by the parties of the first part, or their legal representatives, that said party o fthe second
3097 part, its successors or assigns shall have the exclusive right to locate own or conduct a mercantile business said premises for the period of this lease.

It is further understood and agreed, that the party of the second part, its successors and assigns, shall survey and plat the land above reserved to erect dwellings on for miners and other employes of said second party, its successors and assigns, in lots not exceeding 50 X 140 feet deep with streets not exceeding 50 feet wide, alleys of the width of 20 feet.

It is further understood and agreed that said parties of the first part, their legal representatives, shall at all times during reasonable hours have the right to enter said mine or mines, shafts or slopes, for the purpose of investigation.

It is further agreed and understood by the parties hereto, that if the conditions of this lease are not complied with by the parties of the second part, its successors or assigns, that the said parties of the first part, or their legal representatives, may declare this lease at an end, by giving the said parties of the second part, its sucessors or assigns, notice in writing sixty days prior to the cancelling of the same.

In Witness Whereof, we have hereunto set our hands and seals this the First day of May, 1907.

Attest, C. H. Howe,
witness to
every signature

Mrs BELLE McEACHIN
LULA S. HOWE
R. A. McEACHIN
Mrs. NORMA McEACHIN
FANNIE B. LAKE
PEARL DOUGHLASS
RUBY INGRAM
W. D. McEACHIN
Parties of the First Part
MISSOURI COAL CO
By J. D. Chastain
President.

Attest
B. C. Homer
Secretary.

3098 Central District,
Indain Territory.

Be it remembered that on this day before me G. W. Richardson, a Notary Public, within and for the Central District of the Indian Territory, duly commissioned and acting as such, appeared in person Mrs. Lula S. Howe, to me personally well known as one of the party grantors to the within lease contract, and who stated to me that she had signed and executed said lease contract for the purpose, considerations and usages therein mentioned and set forth. And I do hereby so certify.

In testimony whereof, I have hereunto set my hand and seal, in the city of Hugo, I. T. this the 3rd day of May, 1907.

(Seal)

G. W. RICHARDSON,
Notary Public.

My commission expires July 6th, 1907.

Proof of Lease by Subscribing Witness.

Choctaw Nation, Indian Territory, Central District.

Be it remembered that on this the 3rd day of May, 1907, before me G. W. Richardson, a Notary Public, in and for the Dis-

trict aforesaid, personally appeared C. H. Howe, the subscribing witness to the foregoing lease, to me personally well known, who, being by me first duly sworn, on his oath stated that he saw Mrs. Belle McEachin, widow, R. A. McEachin and Norma McEachin, his wife, Mrs. Fannie S. Lake and Mrs. Pearl Douglass, lessees in said lease, subscribed said lease on the day of its date for the uses, purposes and considerations therein expressed; and that he subscribed [tht esme] as an attesting witness at the request of said lessees.

3099 In testimony whereof I hereunto set my hand and seal as such Notary Public, at the District aforesaid this 3rd day of May, 1907.

(Seal) G. W. RICHARDSON,
Notary Public.

My Commission expires the 6 day of July 1907.

Proof of Lease by Subscribing Witness.

Choctaw Nation, Indian Territory, Central District.

Be it remembered that on this the 3rd day of May 1907 before me G. W. Richardson, a Notary Public, in and for the District aforesaid, personally appeared C. H. Howe, the subscribing witness to the foregoing lease, to me personally well known, who being by me first duly sworn, on his oath stated he saw Mrs. Ruby Ingram, and W. D. McEachin, lessees in said lease, subscribed said lease on the Second day of May, 1907 for the uses, purposes and considerations therein expressed; and that he subscribed the same as an attesting witness at the request of said lessees.

In testimony whereof I hereunto set my hand and seal as such Notary Public, at the District aforesaid, this 3rd day of May, 1907.

(Seal) G. W. RICHARDSON,
Notary Public.

My Commission expires the 6 day of July 1907.

State of Arkansas,
County of Sebastian.

On this day came before me, a Notary Public within and for the County and State aforesaid, duly commissioned and acting as such, J. D. Chastain, to me personally well
3100 known, and made oath that he is the president of the Missouri Coal Company, and that he had signed the foregoing Lease contract and had caused the seal of the said Mis-

souri Coal Company to be attached to said Lease contract by order of the board of directors of said Missouri Coal Co., and that the seal thereto attached is the genuine seal of said Missouri Coal Co. And also came B. H. Cannon, to me well known, and made oath that he is secretary of said Missouri Coal Co. and that he attached the seal of said Company to said Lease contract by order of the president and Board of Directors; and that both said J. D. Chastain and B. H. Cannon acknowledged that they, and the said Missouri Coal Company had executed said Lease contract for the purposes and considerations therein mentioned and set forth, and I do hereby so certify.

In testimony whereof, I have hereunto set my hand and official seal as such Notary Public, this the 1st day of May, A. D. 1907.

(Seal) RANSOM GULLY, Jr.,
Notary Public.

My Commission expires May 20th 1908.

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District.

I, John E. Tatum, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 22" day of January, A. D. 1908 at 5 o'clock P. M., and the same is now duly recorded with the acknowledgments and certificates thereon, "Record Book 40" page 392.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 5" day of Feb. A. D. 1908.

3101 (Seal) JOHN E. TATUM,
Circuit Clerk and Ex-Officio Recorder,
By ....., Deputy Clerk.

Q. I hand you paper marked plaintiffs' Exhibit 120, and will ask you what that is? A. Yes, sir, I know what it is.
Q. What is it?
A. That is a lease of a boiler from the Mammoth Vein Coal Company to the Prairie Creek Coal Mining Company.
Q. Bearing what date? A. The 27th day of March, 1911.

Mr. Drinker: I offer that in evidence, plaintiffs' Exhibit 120.

(Exhibit 120, so offered in evidence, is in the words and figures following, to-wit):

Exhibit 120.

Contract.

Made and entered into this 27th day of March, 1911, by and between the Mammoth Vein Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of $18.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 72" x 18' return tube boiler recently purchased from the Erie Boiler Works and placed at #4 shaft in Sec. 1 T 4 N R 32 West in Sebastian County, Arkansas.

3102 This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this boiler and fittings, shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made [us] of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part

shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall [br] returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

3103 Witness: our hands and seals this 27th day of March, 1911.

MAMMOTH VEIN COAL COMPANY,
By H. Denman, Treas.
PRAIRIE CREEK COAL MINING COMPANY,
By C. H. Finley, Acting Auditor.

Q. I hand you plaintiffs' Exhibit 121, and will ask you what that is?

A. It is a lease from the Kali Inla Coal Company to the Mammoth Vein Coal Company for some steel rails.

Mr. Drinker: I offer exhibit 121 in evidence.

(Exhibi [12], so offered in evidence, is in the words and figures following, to-wit):

Exhibit 121.

Contract.

Made and entered into this 1st day of January, 1912, by and between the Kali-Inla Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth:

That for and in consideration of $1.20 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

1.8 tons steel rails located at Mine No. 6.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of

the second part shall be liable to the party of the first part for the full value of the machinery.

3104 At the expiration of this lease, these steel rails shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three mils from their present location at No. 6 mine and they shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part, shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end or the lease period at the option of the party of the first part.

Witness our hands and seals this 1st day of January, 1912.

KALI-INLA COAL COMPANY,
By H. Denman.
MAMMOTH VEIN COAL COMPANY,
By C. H. Finley.

3105 Q. I hand you paper marked plaintiffs' Exhibit 122, and will ask you to identify that?

A. Yes, sir; that is an assignment as of the Mammoth Vein Coal Company of a certain boiler.

Q. Is that the same boiler that was covered by contract, Exhibit 120?

A. Yes, sir; the boiler described, as of the 27th day of March, 1911.

Q. I hand you Exhibit 123, and will ask you what that is?

A. This is a lease on an air compressor of the Mammoth Vein Coal Company, an air compressor at No. 6 mine; the Kali Inla Coal Company to the Mammoth Vein Coal Company.

Mr. Drinker: I will read this as one of the number of contracts all in similar form.

(Exhibit 123, so offered in evidence, is in the words and figures following, to-wit):

Exhibit 123.

Contract.

Made and entered into this 30th day of November, 1910, by and between the Kali-Inla Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth:

That for and in consideration of $7.40 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Air Compressor located at Mine #6.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party
3106 of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this air compressor shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #6 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made [us] of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part, shall, at its own cost, return the machinery to the party of the first part, to the place from which it

was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 30th day of November, 1910.

KALI-INLA COAL COMPANY,
By Heber Denman Secy & Treas.
MAMMOTH VEIN COAL COMPANY,
By F. Bache.

3107 Mr. Covington: We would like to look at that.

(Exhibit 123 handed to Mr. Covington.)

Q. I hand you plaintiffs' Exhibit 124, and will ask you to identify that.

A. This was a lease from the Denman Coal Company to the Mammoth Vein Coal Company for 35 mine cars, moved to No. 6 mine.

Mr. Drinker: I offer in evidence these papers, plaintiffs' Exhibit 120, 121, 122, 123 & 124.

The Court: Just identified by the witness.

Mr. Drinker: Just identified by the witness.

The Court: Consider them as read.

(Exhibits 122 and 124, respectively, so offered in evidence, are in words and figures following, to-wit):

Exhibit 122.

Assignment of Contract.

For and in consideration of payment of $1.00, the receipt whereof is hereby acknowledged, and other valuable considerations, the Mammoth Vein Coal Company hereby assigns to the Kali-Inla Coal Company all its interest in the contract between the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company dated March 27th, 1911, covering lease of one 72″ x 18′ return tubular boiler located

at #4 shaft in Sec. 1, twp. 4, N, Range 32 West, Sebastian County, Arkansas.

Aug 3 - 1911

MAMMOTH VEIN COAL CO.
By H. Denman
KALI INLA COAL CO.
By C. H. Finley Auditor

3108 Exhibit 124.

Contract.

Made and entered into this 5th day of October 1910, by and between the Denman Coal Co., party of the first part, and Mammoth Vein Coal Company., party of the second part.

Witnesseth: That for and in consideration of a payment of 35 00 Thirty five dollars per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described machinery: 35 mine cars 25 moved about Sept 15 - 1910 and 10 (or more) taken from Burma shaft previous to that time taken to Mine #6 of Cherokee Cons Co., Sec. 13 T 5 N R 32 W Sebastian County, Ark.

Which was removed from the Property of the Denman Coal Co., at its mine number 1, located at Burma Ark., on or about Sept 15 - 1910 and previous

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sub-let, loaned or be made [us] of to or by any other individual,
3109 partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of 3 months consecutive months, the party of the first part at his option may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 5th day of Oct 1910

DENMAN COAL CO
By H Denman Pres

MAMMOTH VEIN COAL CO
Ransom Gully Jr

Q. I believe you identified plaintiffs' Exhibit 108 as being the Boone lease? A. I did identify that.

Mr. Drinker: I offer in evidence the Boone lease, plaintiffs' Exhibit 108.

(Exhibit 108, so offered in evidence, is in the words and figures following, to-wit):

3110 Exhibit 108.

Know All Men by These Presents: That for and in consideration of the premises hereinafter set forth, we, T. W. M. Boone and Ella Boone, his wife, lease to the Prairie Creek Coal Company, (hereinafter called the company, which is intended to and does include its successors and assigns) its successors and assigns, the following described real estate situated in the Greenwood district of Sebastian County, Arkansas, to-wit:

The west half of the southeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter, which lie north of Cherokee Creek, and the south twenty-three acres of the northwest quarter of the northwest quarter, all in Section twenty-seven, and the east half of the northeast quarter, the east half of the northwest quarter of the northeast quarter, the southwest quarter of the northeast quarter

north of Cherokee Creek, and the east half of the northeast quarter of the southeast quarter, all in Section twenty-eight, Township five North Range thirty-one west.

To Have and to Hold unto the said Prairie Creek Coal Company, its successors and assigns, for a period of twenty years from date hereof, together with the privileges and rights hereinafter set forth.

The said Prairie Creek Coal Company shall have all the farming rights to the surface of said land, and the right to mine coal and quarry stone on all of said land, and the right to use any stone or timber necessary for building purposes or for mining purposes, or which may be necessary for the use of the said company in conducting its business of opening, equipping or operating coal mines or rock quarries on any
3111 or all of said land, there being no charge for timber used or rock quarried for the purposes aforesaid.

The said Prairie Creek Coal Company agrees to pay to the said T. W. M. Boone a royalty of five cents per ton on all run of mine coal taken from the land above described, and to pay said Boone five cents per cubic yard royalty for all stone sold by the said company taken from the aforesaid land.

It is agreed that the said company shall pay to the said Boone, on or before the 20th day of each month all royalties due him on coal mined or rock quarried as aforesaid during the preceding month, and it is further agreed that if the total amount of royalty on coal mined and rock quarried as aforesaid during any one year, from said land, shall not amount to twelve hundred dollars, that the said company shall, on or before the first day of January in each year thereafter that said royalty on coal and rock does not amount to twelve hundred dollars, pay to the said Boone a sum sufficient to make the minimum amount paid on this lease in any one year twelve hundred dollars; provided, however, that if the coal on said land should be exhausted for practical mining purposes prior to the termination of this lease, then, in that event, the minimum royalty herein provided shall cease and terminate.

It is further agreed and understood between the parties hereto that should any other mineral be discovered on the premises hereinbefore described during the continuance of this lease, that the said company shall have the option of mining said mineral at a royalty to be agreed upon between the parties hereto or their successors or assigns.

The said T. W. M. Boone reserves the right to enter, either in person or by agent, any of the mines or quarries
3112 opened by the said company on said property, at any reasonable time, to inspect the same, and shall have the right to examine the weighing and shipping books of the company covering the shipments from said mines on this property, and the said company is to make monthly statements of all coal taken out, and rock taken out, for commercial purposes during the preceding month.

It is further agreed and understood that all of the openings of the mines are to conform to the mining laws of the State of Arkansas, and that at least two plats of said mines shall be made, and one furnished to the said Boone; and the said company shall, in operating said mines strictly conform to the laws of the United States and the mining laws of the State of Arkansas.

It is further agreed that the said T. W. M. Boone is to pay the taxes assessed against said land during the continuance of this lease, the said taxes to be paid by him, however, shall not include the mining improvements, or any other improvements, now upon said land or hereafter to be erected thereon or therein, and in case of a joint assessment of the land and improvements together, the assessment of land is to be separated from the assessment so made by the parties hereto, and the said Boone only to pay the taxes upon the land.

It is further agreed that if the conditions of this lease are not complied with by said company that the said Boone may declare said lease at an end by giving the said company notice in writing sixty days prior to the cancelling of the same. Said Boone hereby further agrees to protect the said company against all parties claiming an interest in the above leased property or damage therein by reason of this lease, and warrants and defends the title to the same.

It is further agreed and understood by and between the
3113 parties hereto that if, for any reason, this lease should be cancelled, or when it lapses by its own terms, that the said company shall have the right to move and take away from the above described land any improvements that the said company may have made, or caused to have been made, or that may have been made by any tenants or lessees of said company.

It is expressly understood and agreed that the said Boone shall have a lien on all improvements for the payment of the royalties herein provided for.

This lease is made in substitution of a prior lease which has been lost or misplaced, and does not include the various and [dirvers] houses which have been erected upon the aforesaid ground by individuals with the consent of the parties hereto and under leases from the company and for which said individual parties pay to the company ground rent.

And I, Ella Boone, wife of the said T. W. M. Boone, for the consideration aforesaid, do hereby release and relinquish unto the Prairie Creek Coal Company all my right and possibility of dower in and to the leased interest herein conveyed.

In Testimony Whereof we have executed this in duplicate on this the 13th day of January, 1903.

T W M BOONE
ELLA BOONE

Acknowledgment.

State of Arkansas,
County of Sebastian—ss.

On this 14th day of January, 1903, before me R. C. Johnston, a Notary Public within and for the county and State aforesaid, duly commissioned, qualified and acting, appeared in person, T. W. M. Boone, to me personally well known
3114 as the person whose name appears upon the within and foregoing lease, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And I further certify that on the same day voluntarily appeared before me Ella Boone, wife of the said T. W. M. Boone, to me well known to be the person whose name appears upon the foregoing lease, and in the absence of her said husband, stated and declared that she had of her own free will executed said lease, and had signed [thr] relinquishment of dower therein expressed, for the purposes and consideration therein contained and set forth without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand and seal of office as such Notary Public at the county and State aforesaid, on this the 14th day of January, 1903.

(Seal) R. C. JOHNSTON
Notary Public

My Commission Expires Nov. 28-1903

For and in consideration of the premises set forth in the foregoing lease of T. W. M. Boone, the Prairie Creek Coal Company hereby accepts the same and agrees to the terms, conditions and limitations therein set forth.

In Testimony whereof it has hereunto set its hand and corporate seal this the 13th day of January, 1903.

(Seal) PRAIRIE CREEK COAL COMPANY
H. F. Rogers By H. B. Salls
Secretary.

3115 State of Arkansas
County of Sebastian—ss.

Before me, the undersigned, a Notary Public within and for the county and state aforesaid, duly commissioned and acting, personally appeared H. B. Salls, and Horace F. Rogers, to me personally well known and known to be the Vice President and Secretary, respectively, of the Prairie Creek Coal Company, a corporation created under and by authority of the laws of the State of Arkansas, and they acknowledged and declared that they had accepted and executed the above and foregoing lease for the Prairie Creek Coal Company, pursuant to the authority and direction of the Board of Directors of said Prairie Creek Coal Company, as the act and deed of the Prairie Creek Coal Company, for the purposes and consideration therein mentioned and set forth.

In Testimony Whereof I have hereunto set my hand and affixed my Notarial Seal this the 15 day of January, 1903, at the county and state aforesaid.

(Seal) A. S. DOWD,
Notary Public

My Commission Expires Feby 12" 1906

Certificate of Record.

State of Arkansas
County of Sebastian, Greenwood District—ss.

I, John E. Tatum, Circuit Clerk and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 16 day of Jan A. D. 1903 at 7:30 o'clock A. M., and the same is now duly recorded with the acknowledgments and certificates thereon, "Record Book 81" page 5.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court this 23 day of Jan. A. D. 1903.

3116 (Seal)

JOHN E. TATUM,
Circuit Clerk and Ex-Officio Recorder.
By Deputy Clerk.

Q. And you also, I believe, identified the paper plaintiffs' Exhibit 112, but not all the papers annexed to it. It wish you would look through it and state what papers there are annexed to that original paper, in addition to the Sebastian County lease to Mr. Bache.

A. You want me to state what these different papers are?

Q. Yes. The first is an assignment from the Sebastian County Coal Company to the Arkoal Company, authorizing the Coronado Coal Company to assign to the Arkoal Company all the right, title and interest that the Sebastian County Coal Company has assigned to the Coronado Coal Company in the surface of the land leased by the Sebastian Coal Company to the Coronado Coal Company.

Q. What is the next one?

A. Franklin Bache hereby authorizes and agrees to the deed of the Corondo Coal Company to the Armoal Company, dated September 14th, 1909, conveying the Coronado Coal Company's surface rights to the Arkoal Company.

The next is the Sebastian County Coal Company accepts and agrees to the assignment of the lease from the Sebastian Coal Company to the Franklin Bache, dated February 1st, 1907, to the Coronado Coal Company by the said Franklin Bache said assignment being dated January 1st, 1907.

The papers above referred to annexed to Exhibit 112, are in the words and figures following, to-wit):

"Ft. Smith, Ark., Oct., 5, 1909.

The Sebastian County Coal Company hereby authori-
3117 zes the Coronado Coal Company to assign to the Arkoal Company all the rights, title and interest that the Sebastian County Coal Compay has assigned to the Coronado Coal Company in the surface of the land leased by the Sebastian County Coal Company to the Coronado Coal Company.

SEBASTIAN COUNTY COAL CO.
By F Bache Pres
Ransom Gully Jr Secy

Ft. Smith, Ark., Oct. 5, 1909.

Franklin Bache hereby authorizes and agrees to the deed of the Coronado Coal Company to the Arkcoal Company dated September 14, 1909, conveying the Coronado Coal Company surface rights to the Arkoal Company.

FRANKLIN BACHE

Ft. Smith, Ark., Oct. /5 1909.

The Sebastian County Coal Company hereby accepts and agrees to the assignment of the lease from the Sebastian County Coal Company to Franklin Bache dated Jaunary 1, 1907, to the Coronado Coal Company by the said Franklin Bache, said assignment being dated January 1, 1907.

SEBASTIAN COUNTY COAL CO.
Ransom Gully Jr Secy
By F Bache Pres

(The paper hereinafter referred to, attached to Exhibit 112, is in words and figures following, to-wit):

Assignment.

Know All Men By These Presents: That, I, Franklin Bache, Lessee in the above and foregoing lease, for and in
3118 consideration of the sum of Ten Thousand ($10,000.00) Dollars to me in hand paid, the receipt whereof is hereby acknowledged, and a further consideration of the Coronado Coal Company, the Grantee herein, assuming and agreeing to carry out all of the conditions and obligations which I as Lessee am in any way liable for according to the terms and conditions of the above and foregoing Lease, do hereby transfer, assign and set over to the said Coronado Coal Company, a corporation organized under the laws of the State of West Virginia, all of my right, title, interest, and privilege of every kind and character which I have by reason of the above and foregoing lease.

To have and To hold the same unto the said Coronado Coal Company, and unto its successors and assigns as fully and completely as if the original lease hereto attached had been made with the said Coronado Coal Company, and as rully and completely as I can transfer, convey, set over and deliver the same to the said Coronado Coal Company.

In testimony Whereof, I have hereunto set my hand on this the 1st day of Jany, 1907.

F. BACHE

State of Arkansas
County of Sebastian.

On this the 1st day of Jany, 1907, before me, Ransom Gully, Jr, a Notary Public within and for the County and state aforsaid, personally appeared Franklin Bache, to me personally well known, and stated that he had signed and executed the above and foregoing instrument for the considerations and purposes therein mentioned and set forth.

In Testimony whereof I hereunto set my hand and
3119 seal on this the date first above written.

(Seal) RANSOM GULLY JR
Notary Public

My Commission expires: 5/20-08

3120 Q. Now, turn to the paper at the end of this lease, and I will ask you,—it is entitled at the top, "Assignment", and will ask you what that is. Is that an assignment by Mr. Franklin Bache to the Coronado Coal Company of the Boone lease?

A. Yes, sir, this is an assignment of Franklin Bache to the Coronado Coal Company.

Q. Of the Boone lease?

A. Yes, sir, of the Boone lease.

Mr. Drinker: Now, I offer that in evidence.

The Court: Exhibit what?

Mr. Drinker: Exhibit 112.

(Exhibit No. 112 so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 112.

"Lease On Coal Land.

This Agreement, made this first day of Jany 1907, by and between Sebastian County Coal Company, of the first part, hereinafter designated "Lessor," and Franklin Bache, of the second part, hereinafter designated "Lessee", Witnesseth:

That, Whereas, the said Lessor has become and is the owner of a lease covering the coal land hereinafter described, and having full power to sub-lease the same, and being de-

sirous of leasing the same for the purpose of obtaining royalties on as large production of coal from the hereinafter described premises as practicable.

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

First: The said Lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the said Lessee to be
3121 paid and performed, has leased, demised and let, and does hereby lease, demise and let unto the said lessee for the term of Sixteen (16) years from the Thirteenth (13) day of January, 1907 the following premises, situate in Sebastiar County. State of Arkansas, to-wit:

The West half of the Southeast Quarter of the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter, which lies North of Cherokee Creek, and the south twenty-three (23) acres of the Northwest Quarter of the Northwest Quarter, all in Section Twenty-seven (27), and the East half of the Northeast Quarter, the East half of the Northwest Quarter of the Northeast Quarter, the Southwest Quarter of the Northeast Quarter North of Cherokee Creek, and the East half of the Northeast Quarter of the Southeast Quarter, all in Section Twenty-eight, Township Five, Northn Range Thirty-one West.

Second: With the exclusive right to dig for and mine, remove and dispose of coal in, under and upon the above described land, together with all houses situate on said above described premises over which Lessor herein has control.

Third: The right to cut and use for the purpose of mining operations, any timber on said above described land.

Fourth: The right to erect miner's houses, tipples and such other buildings or works, including water supply reservoirs, as may be necessary or convenient in the operation of the said mine, and to erect and operate coke ovens upon any portion of the said above described tract of land, together with the right to dig, hew and use for the purpose of said mining operations, such building stone, fire clay, and other building materials as may be found upon said tract of land above described.

Fifth: The right to use such running water as may be
3122 found upon any of the tracts hereby leased, or found upon the surface which covers any of the coal hereby leased, to the extent that the Lessor has the right to use the

same; Provided, such use of the said water shall in no way interfere with its use on other land now owned or which may hereafter be acquired by the said Lessor.

Sixth: The said Lessor hereby convenants and agrees to and with the said Lessee that it shall and may at all times hereafter during the continuance of the term hereby granted, peaceably and quietly have, hold, possess and enjoy the premises and exercise the rights hereby demised, without let or hindrance by or from the said lessor or by or from any person or persons lawfully claiming the same or any part thereof by, from or under him.

Seventh: The said Lessor hereby retains and reserves the right, and the Lessee hereby convenants that the said Lessor shall have the right, by his officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface and to inspect, examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessor, not less frequently than one in six months, with an accurate copy of said map.

Eight: The said Lessor further reserves during the continuance of this lease, for himself, and his assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for
3123 roads, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads, railways, waterways and side tracks constructed by the said Lessee upon the herein demised premises as provided hereinafter in this paragraph. Provided, that proper compensation shall be made by the said Lessor and his assigns and lessees, and any and all of them, for such use of said tracks, roads, railways, waterways and side tracks constructed by the said Lessee, such proper compensation, if not mutually agreed upon, to be determined by arbitration as hereinafter provided.

Ninth: It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among others, the lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual

mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of assuring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entires, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of said entries, ganways, air courses, slopes shafts or planes may be directed is mined out as fully as it can be mined out by first class mining methods, or until the Lessor gives his consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings under-
3124 ground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines or dimensions fully sufficnet to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the Lessee shall conduct no stripling operation on the coal beds hereby demised without the written consent of the Lessor being first had, and the Lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the out crop of the coal bed.

That the Lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference either with the use by the said Lessor of the surface covering the coal hereby leased, excepting that surface hereby demised, or with land of said Lessor bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessor now has standing or may hereafter cause to be constructed on the said surface or bounding lands.

The Lessee hereby expressly agrees that it will at all
3125 times keep the workings of the mines operated by it on the said demised premises free from water and dangerous gases.

Tenth: The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the Lessor against the violation of said laws by said Lessee.

Eleventh: As a part of the consideration for this lease the said Lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said Lessor from and claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mine.

Twelfth: The said Lessee covenants that it will at the termination of this lease, deliver up and surrender to the said lessor, to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, openings, tramways inclines, chutes, tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever, in good working order and repaid; but on such termination of this lease the working tools and implements used in mining, together with all machinery, miners' houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said Lessee shall be and remain the property of the said Lessee. But it is hereby expressly agreed that upon such termination of this lease the said Lessor shall have the right as regards the said working tools, mining implements machinery, tracks, pit cars, rails and miners' houses, declared as aforesaid to be the property of the said
Lessee, to purchase the same from the said Lessee at a
3126 fair market price, to be determined, if not mutually agreed on, by arbitration as hereinafter provided for. It the said Lessor shali not avail himself to such right of purchase, then the said lessee may remove the same, provided all royalties then due the said Lessor by the said Lessee be paid and all and singular o fthe other covenants and agreements of this lease be performed, such right of removal, however, to terminate ninty (90) days after the termination of said lease.

Thirteenth: The said Lessee further covenants and agrees that it will not at any time during the term of this lease as-

sign, either voluntarily or involuntarily, sub-let or transfer the same or any part thereof, or sub-let or demise the said premises or any part thereof, to any person or persons, or corporation whatsover, without the written consent of the said Lessor, under his seal, first had and obtained; but said Lessee may construct necessary dwellings for its employees upon the tract as aforesaid leased for, in part, that purpose; and also the dwelling houses now on premises controlled by Lessor and may sub-let such dwellings to its employees while they remain in the service of said Lessee; provided that the Lessee herein is hereby authorized, and granted the privilege of sub-leasing or transferring this lease to the Coronado Coal Company, a corporation organized under the laws of the State of West Virginia, for such consideration and upon such terms as the said Lessee may desire, and permission for so doing is hereby granted.

Fourteenth: The said Lessee agrees to pay to the said Lessor a royalty of ten cents per ton on all coal mined from the above described land, and it is further agreed that
3127 the said Lessee shall pay to the said Lessor on or before the 20th day of each month all royalties due on coal mined as aforesaid during the preceding month, and it is further agreed that if the total amount of royalty on coal mined as aforesaid during any one year, from said land, shall not amount to twelve hundred dollars, that the said Lessee shall, on or before the first day of January in each year thereafter that said royalty on coal does not amount to twelve hundred dollars, pay to the said Lessor a sum sufficient to make the minimum amount paid on this lease in any one year twelve hundred dollars; provided, however, that if the said coal on said land should be exhausted for practically mining purposes prior to the termination of this lease, then in that event, the minimum royalty herein provided shall cease and terminate.

Fifteenth: And the said Lessor, if he so elects, shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessor may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Lessor or the said Lessee, then such dispute shall be settled by testing the said scales by government weights.

The said Lessee further covenants and agrees to furnish within five (5) days from the last day of every month (calen-

dar), at the office of the Lessor in Fort Smith, Ark., a report properly authenticated, showing the coal mined or dug and used or removed from the said mine during the preceding calendar month, and to pay to such person or corporation as said Lessor shall direct the amount of the rent or royalty due for for the said preceding month; and if any coal
3128 shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quanity of same shall be ascertained, on account rendered for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account of the mining and shipping of coal and coke, and that said book or books shall be open to the inspection of said Lessors and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

Sixteenth: Should the royalty on coal mined in any year not amount to the minimum rental for that year, then the said Lessee covenants and agrees that it will pay to the said Lessor dead rentals so that the same shall equal the minimum rental aforesaid, but the said Lessee shall have the privilege of mining during the next succeeding year, free from royalty, such a quanity of coal over and above the quanity which will yield the said minimum rental for that year, as will in royalties reimburse the said Lessee for the dead rentals paid during the preceding year.

Seventeenth: The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

Eighteenth: Any difference as to the proper manner of mining or as to quanity of available coal to be left standing before abondoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducted said mining operation, and any other matter herein specifically referred to arbitrators, shall upon motion of either party to this
3129 lease, be referred for settlement to a board of arbitrators, which shall be substituted and chosen in the following manner: The party alleging such nonperformance or breach by the other shall give ten days' notice in writing to the othey party of the appointment of an arbitrator to act hereunder and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to

appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failing to agree on the selection of such third party, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party be appointed by the Judge of the United States Circuit Court, for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

Nineteenth: It is further covenanted and agreed by and between the parties hereto that in the event that the said lessee shall delay or refuse to comply with the terms of this lease, and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at its option, after sixty (60) days' notice to the Lessee, have the right to reenter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation.

Twentieth: In the event of such termination of this lease for a breach of contract by the Lessee, the said Lessee
3130 shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said Lessee has made full satisfaction to the Lessor for any and all damage which he may sustain by reason of such delay or refusal to comply with the terms of this lease; and in that event none of said properties aforesaid shall be removed from said premises until all royalties and other payments due the said Lessor hereunder shall have been paid to the said Lessor; otherwise, such coal, tools, machinery and property shall become the property of the said Lessor. And in the event of any controversy arising out of the matter in this paragraph contained, the same shall be referred to the Board of arbitrators as hereinbefore provided, and all properties shall remain on said premises until a decision is reached by the arbitrators.

Twenty-first: It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said Lessor to distrain for rent due and in arrears under the terms of this lease.

Twenty-second: It is hereby agreed that all rights vested in the said Lessor by this lease shall pass to and vest in his successors or assigns, and that all covenants and agreements

on the part of said Lessee to be kept and performed shall be kept and performed by the said Lessee and by its heirs, executors, administrators and assigns, or by the successors and assigns of the Lessee if the Lessee is a corporation, for the benetifi and advantage of the Lessor and his successors and assigns.

Twenty-third: It is hereby agreed that the said Les-
3131 see shall keep the said Lessor informed of the place of its offices and the names of its agents, whether in this state, or elsewhere; and that the said Lessor shall keep the said Lessee informed of any change in or transfer of the said Lessor under this lease.

Witness the hands and corporate seal of the parties hereto in duplicate, each an original, the day and date first above written.

SEBASTIAN COUNTY COAL CO.
By Joseph M. Spradling,
President,
Lessor.

(Corporate Seal)

Attest:
J. L. Spradling,
Secretary.

FRANKLIN BACHE,
Lessee.

State of Arkansas,
County of Sebastian.

On this the 4th day of April, A. D., 1907, before me, ..., a Notary Public within and for the County of Sebastian, State of Arkansas, personally appeared J. M. Spradling personally known to me as the President of the Sebastian County Coal Company, and J. L. Spradling, personally known to me as the Secretary of the said Company, and in my presence state that they execute the above and foregoing instrument for and on behalf of the said Sebastian County Coal Company for the consideration and purposes therein mentioned and set forth, and further state on oath that they are the president and secretary, respectively of said corporation, and that the said corporation by authority of its Board of Directors had duly authorized them to execute the said instrument above mentioned, and state that the said instru-
3132 ment was the free act and deed of the said Sebastian County Coal Company.

In testimony whereof, I have hereunto set me hand and seal as such Notary Public, on this the 4th day of April, 1907.

(Signed) (Signature illegible.)
Notary Public.

(Seal)

My commission expires Sept. 29, 1907.

State of Arkansas,
County of Sebastian.

On this the 1st day of Jany, 1907, before me, Ransom Gulley, Jr., a Notary Public, within and for the county and state aforesaid, personally appeared Franklin Bache, to me personally well known, and stated that he had executed the above and foregoing instrument for the considerations and purposes therein mentioned and set forth, and I do so certify.

In testimony whereof, I have hereunto set my hand and seal as such Notary Public on this the.....day of....., 1907.

(Signed) RANSOM GULLEY, JR.,
(Seal) Notary Public.

My commission expires May 20th, 1908."

Q. I hand you paper marked Plaintiffs Exhibit 109, and will ask you whether that is an assignment of the Boone lease to the Sebastian County Coal Company by Joseph M. Spradling, reciting prior assignments from the original lessees to Mr. Spradling.

The Court: Was not this identified yesterday?

Mr. Drinker: I am not certain I identified a couple of them.

A. Yes, sir, this is an assignment of the Bache lease by Joseph M. Spradling to the Sebastian County Coal
3133 Company.

Mr. Drinker: I offer that paper marked Exhibit 109 in evidence.

(Exhibit 109 so offered in evidence is in words and figures, following, to-wit:)

Exhibit 109

3134 Assignment of the Boone Lease

To the Sebastian County Coal Company.

Whereas, on the 13th, day of January, 1905, T. W. M. Boone and Ella Boone, his wife, leased to the Prairie Creek Coal Company, its successors and assigns, the following described real-estate located in the Greenwood District of Sebastian County in the State of Arkansas, to-wit:

West half of the Southeast quarter of the Northwest quarter and the Southwest quarter of the Northwest quarter which lies North of the Cherokee Creek, and the South twenty-three (23) acres of the Northwest quarter of the Northwest quarter, all in section twenty-seven (27); and the East half of the Northeast quarter, the East half of the Northwest quarter of the Northwest quarter the Southwest quarter of the Northeast quarter north of Cherokee Creek, and the East half of the northeast quarter of the Southeast quarter, all in Section twenty-eight (28) Township five (5) North, Range thirty-one (31) West:

for a period of twenty-five years from the date of said lease with the privilege to the Prairie Creek Coal Company, among other things of removing the coal from under the premises so leased; and:

Whereas, the Prairie Creek Coal Company has heretofore conveyed its rights under this lease to the American Smokeless Coal Company; and,

Whereas, the said lease, together with all improvements thereon has been sold to the Cherokee Construction Company, at a sale under execution issued against the said American Smokeless Coal Company; and,

3135 Whereas, Joseph M. Spradling, of Hartford, Arkansas, has purchased all the rights of the Cherokee Construction Company and the rights of the American Smokeless Coal Company, in and to said lease and the improvements on said leased premises; and,

Whereas, the said Joseph M. Spradling has agreed to sell assign and convey the said lease, with all the improvements thereon, to the Sebastian County Coal Company:

Now, Therefore, This Agreement Witnesseth:

That, for and consideration of the sum of four thousand dollars ($4000.00) to the said Joseph M. Spradling in hand paid, receipt whereof is hereby acknowledged, I, the said Joseph M. Spralding do hereby sell, assign, transfer and convey the said lease, together with all the improvements thereon, to the said Sebastian County Coal Company, its successors and assigns, to their sole use and behoof forever.

And, the said Sebastian County Coal Company, by its acceptance of this conveyance and transfer hereby covenants and agrees to assume the payments of all royalties due the said Boone under said lease for the year 1905 and subsequent years, and to assume all obligations under the lease.

In testimony whereof, I have hereunto set my hand and seal on this the 22 day of November, 1905.

(Signed) JOSEPH M. SPRADLING.

The above and foregoing transfer and conveyance of said lease is hereby accepted, and ratified in all its terms.

This November 22, 1905.

SEBASTIAN COUNTY COAL COMPANY,

Attest: By (Signed) Joseph M. Spradling.

..... President.

Acknowledgment.

3136 State of Arkansas,
County of Sebastian—ss.

Be it remembered, that on the 6th day of April 1907, before me, the undersigned Notary Public within and for the County and State aforesaid duly commissioned and acting, personally appeared Joseph M. Spradling, to me well known, as the person whose name appears to and upon the above and foregoing assignment of lease as party grantor, and stated that he has executed the same for the purposes and considerations therein mentioned and set forth.

In testimony whereof I have hereunto set my hand and seal of office on the day and year first above written.

(Signed) A. J. DOWD,

(Seal) Notary Public.

My commission expires Feby. 12, 1910.

3137 Q. I hand you paper marked Plaintiffs Exhibit No. 113, and will ask you whether that is an agreement between the Arkansas Coal Mining Company, dated December 23, 1913, to the Coronado Coal Company.

A. Yes, sir, this is the lease.

Q. What property is that a lease of?

A. This is the property adjoining the Coronado Coal Company; I identified this yesterday.

Q. What size tract did you call it in your testimony?

A. 130 acres.

Mr. Drinker: I offer that paper, marked Exhibit 113 in evidence, and consider it read.

The Court: It will be received.

(Exhibit 113, so offered in evidence is in words and figures, following, to-wit:)

Exhibit No. 113.

"This Agreement, made in duplicate this 23rd day of December 1913, by and between the Arkansas Coal and Mining Company, a corporation, hereinafter called the "Lessor", party of the first part, and the Coronado Coal Company, a corporation, hereinafter called the "Lessee," party of the second part, Witnesseth:

That the Lessor, in consideration of the sums to be paid and the covenants and agreements to be kept and performed by the Lessee, as hereinafter set forth, does hereby grant to the Lessee the right to mine and remove the coal remaining beneath the surface of the East Half (½) of the Northwest Quarter (¼) of Section twenty-eight (28); the West Half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section twenty-eight (28); that portion of the
3138 Southwest Quarter (¼) of the Northwest Quarter (¼) of Section twenty-eight (28) located East of the following described line:

Beginning at a point in the South line of said Southwest Quarter (¼) of the Northwest Quarter (¼) two hundred eighty and five-tenths (280.5) feet East of the Southwest Corner of the Northwest Quarter (¼); thence North parallel to the West line of the Northwest Quarter (¼) to a point in the center of Cherokee Creek channel; thence along the center line of Cherokee Creek channel to the point of intersection with the North line of the Southwest Quarter (¼) of the Northwest Quarter (¼). Also a three (3) acre tract in the Southeast Corner of the Northwest Quarter (¼) of the Northwest quarter (¼) of Section twenty-eight (28), more particularly described as follows:

Beginning at the Southeast Corner of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence North along the East line of the Northwest Quarter (¼) of the Northwest Quarter (¼) three hundred sixty-one and five-tenths (361.5) feet; thence West three hundred sixty-one and five-tenths (361.5) feet; thence South three hundred sixty-one and five-tenths (361.5) feet; to a point in the South line of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence East three hundred sixty-one and five-tenths (361.5) feet to the point of beginning.

All above described lands located in Section twenty-eight (28), Township five (5) North, Range thirty-one (31) West, Sebastian County, Arkansas, containing in all one hundred and thirty-eight (138) acres, more or less;

for a period beginning on the first day of July, 1914, and continuing until all the underlying coal shall have been
3139 removed therefrom, or until this agreement is cancelled in the manner hereinafter provided.

The Lessee accepts the foregoing grant upon the conditions therein and hereinafter stated, with any and by each of which it agrees to comply and be bound, as follows:

First: All coal mined hereunder shall be reached and removed through shaft of the Lessee known as Coronado Coal Company Mine No. 1, located on land adjoining the land above described, and all mining under said land shall be done in a good and workmanlike manner and in conformity with the best methods in vogue in the Sebastian County, Arkansas field; it shall also be conducted, and the mine managed and operated, in conformity with the rules and regulations of the Mine Inspector or other proper State official or officials of the State of Arkansas and all requirements of said official or officials, or their department, shall be promptly complied with in the prosecution of mining operations conducted under the terms of this lease.

Second: The work of mining upon said premises shall be prosecuted continuously, actively and industriously, beginning as soon as possible after the abandonment of mining operations on the above described property by the Smokeless Fuel Company and not later than January 1st, 1915, provided, however, that the Lessee shall be relieved from this condition if prevented from operating the mine, known as Coronado Coal Company Mine No. 1, by a strike or strikes of the employes working in said mine, or by an unavoidable accident, but only during the actual continuance of such strike or strikes, or until the result of such accident can be remedied.

The coal shall be thoroughly mined and removed, but
3140 it is agreed that the Lessee shall not be required to mine coal at points where the vein of coal is of such thinness or the coal of such inferior quality, or other operating difficulties exist as not to allow of what is usually understood as profitable mining.

Third: It is expressly understood and agreed that this grant confers no right on the Lessee which will interfere in

any way with any part of the surface of said land leased, or any track, building or other structure thereon, and the Lessee agrees that no mining shall be done under any of the tracks or other structures located thereon, nor so near any track or structure as to endanger its safe use or operation, and further that no mining shall be done which will endanger the surface of said quarter section, or any structure thereon, or cause any part of the surface to fall or cave in; and the Lessee hereby further agrees that it will reimburse and indemnify the Lessor, its successors or assigns, for and against all damages, expenses and costs it or they may incur, or become liable for, by reason of or arising out of any injury or damage to railroad tracks, buildings or other structures on the surface of said land caused by or resulting from mining done by the Lessee or its employees, assignees, licensees or other persons under said leased land either before or after the mining is finished.

The President of the Arkansas Coal and Mining Company or his authorized agent, shall be the sole judge as to whether the mining or any work done in connection therewith under this agreement will injury the surface or any track or structure thereon, or is otherwise not being done in the proper manner, and said President or agent shall have the right, in his discretion, to forthwith and immediately stop and end
3141 all mining under said land at any time by written notice to the Lessee or any one in charge of said work if, in his judgment, the work is, at any time, being done improperly or in a manner to endanger such surface or any track or structure thereon, and for such cause said President may terminate all rights given the Lessee hereunder, but nothing in this paragraph contained shall relieve the Lessee, or its assigns, from any liability which may arise on its part under any provision of this contract, or otherwise.

Fourth: The Lessee agrees to pay the Lessor, its successors or assigns, eight (8) cents per ton of two thousand (2000) pounds for all coal mined on said leased premises including mine run, lump, nut, slack and everything sold as any kind of coal, such payments to be made promptly on or before the twentieth (20th) day of the month for coal mined during the preceding calendar month, a statement of the coal so mined to be furnished by the Lessee to the Lessor, its successors or assigns, on or before the tenth (10th) day of the month succeeding that during which the coal is mined, basis for arriving at the tonnage upon which the royalty of eight cents per ton above mentioned shall be paid by the Lessee to the Lessor to be as follows:

Lessee shall keep a correct and contemporaneous account of the coal mined by it upon said leased land, which account shall be based upon the weights of coal mined by the miners working upon said land, a tally of which shall be kept by means of the check numbers used by said miners so employed; the miners working upon said leased land shall have check numbers running from 200 to 300 or any part thereof.

A daily bulletin shall be kept by the Lessee of the coal mined upon said land, which bulletin shall show the
3142 check numbers of the miners mining same and the weight of coal mined by each of said miners. The said Lessee shall, in every manner any way, keep a correct account of the coal mined by it upon said land, and the weight thereof and the date of the mining of same, and said account shall be open to inspection of the Lessor at any and all times.

The Lessee agrees that, commencing with the period beginning January 1st, 1917, in the event the total amount of royalty accruing to the Lessor on basis of eight cents per ton on coal mined on above described leased land does not equal one hundred fifty dollars ($150.00) in any period of three consecutive calendar months, a sufficient additional sum will be paid by the Lessee to the Lessor which, when added to the royalty due, will equal one hundred fifty dollars ($150.00) for each such period of three consecutive calendar months commencing with January 1st, 1917, royalty payments to be made monthly as before, any such deficiency to be paid at end of each quarterly period of such three calendar months; all payments so made in excess of coal actually mined to accrue to the credit of the Lessee as advance royalty, same to be applied toward the payment of any royalty bills exceeding one hundred fifty dollars ($150.00) per quarter due and-payable on coal mined in any succeeding quarterly period. This paragraph is not intended to limit the amount of royalty to one hundred fifty dollars ($150.00) during any such period, but merely establishes a minimum.

Fifth: The Lessee shall furnish to the Lessor at intervals of six months proper and sufficient plats or maps covering the the underground operation of the above described leased land. Failing to comply with this requirement, the
3143 Lessor may, after thirty (30) days' written notice served on the Lessee, arrange for the proper survey of said operations together with preparation of plats or maps of same, expense of which Lessee agrees to pay.

Sixth: The Lessee shall not assign, sell, lease or sub-lease any of its rights under this agreement except upon the writ-

ten consent of the Lessor, and in case of any such assignment, lease or sub-lease, the party claiming under the same shall be subject to all of the obligations of the said Lessee under this agreement.

Seventh: If the said Lessee shall fail or refuse to comply with any of the provisions of this agreement for thirty (30) days after its attention has been called thereto in writing by the Lessor, then the Lessor may, at its option, terminate this grant and all rights conferred thereunder, giving the said Lessee twenty (20) days' notice in writing of the intention of the Lessor to exercise such option, but such termination shall not relieve Lessee from any obligation hereby imposed upon it, except from further prosecution of mining operations.

Nothing in this paragraph shall modify the other provisions in this agreement as to the rights of the Lessee to terminate this agreement.

In the event that the Lessee finds it impossible to continue to profitably operate, mine and sell the coal underlying the above described leased land, whether because of thinness of the vein, an excessive amount of water, bad roof conditions, strikes of employes employed in mining thereon, or if the general market conditions prevent the sale of coal so mined at a reasonable profit above the cost of producing the same, then said Lessee may, upon thirty (30) days' written notice
3144 to the Lessor, its successors or assigns, discontinue the work of mining coal from underneath the above described leased land, whereupon the obligation of the payment of a minimum quarterly royalty of one hundred fifty dollars ($150.00) shall cease and end.

Eighth: Subject to the foregoing provisions, this agreement shall inure to the benefit of and be binding upon the respective successors, lessees and assigns of the parties hereto, as well as to the parties themselves.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their respective proper officers, the day and year first above written.

(Corporate Seal) ARKANSAS COAL AND MINING COMPANY,
By (Signed) W. Nixon, Its President.

Attest:
F. H. Hamilton,
Asst. Secretary.

(Corporate Seal) CORONADO COAL COMPANY,
By (Signed) F. Bache, Its President.

Attest:
E. P. Joyner,
Secretary.

State of Arkansas,
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, F. Bache and E. P. Joyner to me personally well known to be the President
3145 and Secretary respectively, of the Coronado Coal Company, a corporation, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 29th day of Dec., 1913.

(Seal) (Signed) C. H. FINLEY,
Notary Public.

My commission expires May 16, 1914.

City of St. Louis,
State of Missouri—ss.

Be it remembered, that on that day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and City, W. C. Nixon and F. H. Hamilton to me personally well known to be the President and Ass't Secretary respectively, of the Arkansas Coal & Mining Company, a corporation, and acknowledged that they had executed the foregoing instrument as such President and Ass't Secretary for and on behalf of the said corporation, as

its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 16th day of February 1914.

(Seal) (Signed) R. L. KLEIN,
Notary Public.

My commission expires October 9th, 1916."

Q. I hand you Plaintiffs Exhibit 114, and will ask you whether that is an agreement between the Arkansas
3146 Coal & Mining Company and Smokeless Fuel Company, and the Coronado Company, dated December 23, 1913, relative to the tract as mentioned.

A. This is a contract between the Arkansas Coal & Mining Company and the Smokeless Fuel Company in regard to that same land.

Mr. Drinker: I offer Exhibit 114 in evidence and consider it read.

(Exhibit 114, so offered in evidence is in words and figures following, to-wit:)

3147 Exhibit 114.

This Agreement, executed in triplicate this 23rd, day of December, A. D. 1913, by and between the Arkansas Coal and Mining Company, a corporation organized and existing under the laws of the State of Arkansas, first party, and the Smokless Fuel Company, a corporation organized and existing under the laws of the State of Arkansas, second party, and the Coronado Coal Company a corporation organized and existing under the laws of the State of West virginia, third party,

Witnesseth, that

Whereas, the second party, under a lease from the first party, has mined and removed some coal from a strip of land containing nine (9) acres, being the West nine (9) acres of the East half (½) of the Northwest Quarter (¼) of the North east Quarter (¼) of Section twenty-eight (28), in Township five (5) North, Range thirty-one (31) West, and also from the Southwest Quarter (¼) of the Northeast Quarter (¼) of said Section twenty-eight (28), all situate in Sebastian County, Arkansas, and the first party and the

second party claim that the second party has the right, under its lease with the first party, to mine and remove coal from said nine (9) acres of land, and the third party denies such claim; and

Whereas, there is in existence a lease, dated January 15, 1907, from the first party to the second party, by which the first party granted the second party the right to mine and remove coal from Beneath the surface of the Southeast Quarter (¼) of the Northwest Quarter (¼) of said Section twenty-eight (28), among other tracts of land referred to in said lease; and

Whereas, the parties heretofore desire to compromise and settle the controversy between them concerning the
3148 mining and removal of coal by the second party from said nine (9) acres of land and from said Southwest Quarter (¼) of the Northeast Quarter (¼) of said Section twenty-eight (28).

Now, Therefore, in consideration of the mutual covenents, promises and agreements herein contained, it is agreed by and between the parties hereto, as follows:

1. The second party will, on or before July 1, 1914, cease to mine and remove coal, under said lease of January 15, 1907, from the Southeast Quarter (¼) of the Northwest Quarter (¼) of said Section twenty-eight (28), and other lands referred to in said lease.

Conditional on the second party agreeing to cease to mine and remove coal from said tract of land last described on or before July 1, 1914, the first party and the third party will executed a coal mining lease, by which the first party will grant to the third party the right to mine and remove coal from the East Half (½) of the Northwest Quarter (¼) of Section twenty-eight (28); the Westhalf (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section twenty-eight (28); that portion of the Southwest Quarter (¼) of the Northwest Quarter (¼) of Section twenty-eight (28) located East of the following descrubed line:

Beginning at a point in the South line of said Southwest Quarter (¼) of the Northwest Quarter (¼) two hundred eighty and five-tenths (280.5) feet East of the Southwest

Corner of the Northwest Quarter (¼); thence North parallel to the West line of the Northwest Quarter (¼); to a point in the center of Cherokee Creek channel; thence along the center line of Cherokee Creek channel to the point of intersection with the North line of the Southwest
3149 Quarter (¼) of the Northwest Quarter (¼). Also a three (3) acre tract in the Southeast Corner of the Northwest Quarter (¼) of the Northwest Quarter (¼) of Section twenty-eight (28), more particularly described as follows:

Beginning at the Southeast Corner of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence North along the East line of the Northwest Quarter (¼) of the Northwest Quarter (¼) three hundred sixty-one and five-tenths (361.5) feet; thence West three hundred sixty-one and five-tenths (361.5) feet; thence south three hundred sicty-one and five-tenths (361.5) feet to a point in the South line of the Northwest Quarter (¼) of the Northwest Quarter (¼); thence East three hundred sixty-one and five tenths (361.5) feet to the point of beginning.

All above described lands located in Section twenty-eight (28), Township five (5) North, Range thirty-one (31) West, Sebastian County, Arkansas, containing in all one hundred and thirty-eight (138) acres, more or less;

For the period commencing July 1, 1914, and continuing until the third party shall complete the mining and removal of coal from the tract of land last above described, subject to the terms and conditions set forth in such lease.

2. The third party hereby releases, discharges and asknowledges full satisfaction of all its claims and causes of astion against the first party and the second party on account of the mining and removal of coal by the second party from the said West nine (9) acres of the East Half (½) of the North west Quarter (¼) of the Northeast Quarter (¼) of said Section twenty-eight (28), and from the Southwest Quarter (¼) of the Northeast Quarter (¼) of said Section twenty-eight (28), and on account of all acts or omissions whatsoever, which may have been done or omitted by the first party or the second party in connec-
3150 tion with the mining an dremoval of coal from the tracts of land last above described.

In Witness Whereof, the parties hereto have executed this agreement in triplicate the day and year first above written.

(Seal) ARKANSAS COAL AND MINING COMPANY
By (Signed) W. C. Nixon,
President.

Attest: (Signed) F. H. Hamilton,
Ass't Secretary.

(Seal) SMOKELESS FUEL COMPANY.
By (Signed) C. C. Woodson,
Pres.

Attest: (Signed) G. R. Holbrook,
Secretary.

(Seal) CORONADO COAL COMPANY.
By (Signed) F. Bache,
Pres.

Attest: (Signed) E. P. Joyner,
Secretary.

State of Arkansas
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County F. Bache and
3151 E. P. Joyner to me personally well known to be the President and Secretary respectively, of the Coronado Coal Company, a corporation, and asknowledge that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purpose and considerations therein mentioned and set forth and I do so certify.

Witness my hand and notarial seal this 29th, day of December 1913.

(Seal) (Signed) C. H. FINLEY,
Notary Public.

My commission expires May 16, 1914.

State of Arkansas
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, C. C. Woodson and G. R. Holbrook to me personally well known to be the Pres. and Secy. Respectively, of the Smokeless Fuel Co., a corporation, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 29th, day of Jany. 1914.

(Seal) (Signed) Z. T. BEATY,
Notary Public.

My commission expires November 7, 1914.

3152 State of Missouri
City of St. Louis—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and City, W. C. Nixon and F. H. Hamilton, to me personally well known to be the President and Ass't Secretary respectively, of the Arkansas Coal and Mining Company, a corporation, and acknowledged that they had executed the foregoing instrument as such President and Ass't Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 16th day of February, 1914.

(Seal) (Signed) R. L. KLEIN,
Notary Public.

My commission expires October 9th, 1916.

3153 Q. I now hand you a paper marked Plaintiffs Exhibit No. 115, and will ask you if that is a [a] supplemental agreement between the Arkansas Coal Mining Company and the receiver of the same company, relative to that same land, dated in 1916?

A. This is a contract between the Arkansas Coal & Mining Company and the receiver, A. S. Dowd.
Q. Relative to that tract?
A. Yes, sir.

Mr. Drinker: I offer in evidence Plaintiffs Exhibit No. 115.

Mr. Warrum: If that is executed, as counsel says, in 1916, between the Arkansas Smokeless Coal Company and A. S. Dowd, Receiver,—

Mr. Drinker: It is just a supplemental agreement, if you object to it, I don't care to put it in.

Mr. Warrum: We do object to it.

Mr. Drinker: I will withdraw it for the present.

Q. I hand you Plaintiffs Exhibit No. 125, and will ask you if that is a contract between the Denman Coal Company and the Coronado Coal Company, dated October 5th, 1910, for a lease of the two boiler stacks and fittings.
A. It is a lease for one boiler, lease by the Denman Coal Company to the Coronado Coal Company.

Mr. Drinker: I offer Plaintiffs Exhibit 125 in evidence.

(Exhibit 125, so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 125.

"Contract.

Made and entered into this 5th day of October, 1910,
3154 by and between the Denman Coal Coal Co., party of the first part, and Coronado Coal Co. Coal party of the second part.

Witnesseth:

That for and in consideration of a payment of 12.00 dollars per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described machinery: One 48" x 14'-0" return tube boiler stack and fittings taken to Arkoal in Sec. 28 T 5 N R 31 W on Frisco R. R. Sebastian Co. Ark.

Which Was Removed From The Property Of The Denman Coal Co., at its mine number 1, located at Burma, Ark., on or about Aug. 1st, 1910.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part, and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first
3155 part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of 4 consecutive months, the party of the first part at his opinion may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 5th day of Oct. 1910.

DENMAN COAL CO.
By H. Denman, Pres.

CORONADO COAL CO.
By Ramon Gulley, Jr."

Q. I hand you Plaintiffs Exhibit 126, and will ask you what that is?

A. This is a lease of another boiler from another boiler from the Denman Coal Company to the Coronado Coal Company.

Mr. Drinker: I offer Plaintiffs Exhibit 126 in evidence.

(Exhibit No. 126, so offered in evidence is in words and figures, following, to-wit:)

Exhibit No. 126.

"Contract

3156 Made and entered into this 27th day of March, 1911, by and between the Denman Coal Company, party of the first part and the Coronado Coal Company party of the second part.

Witnesseth: That for and in consideration of a payment of $12.00 per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described machinery:

One 48" c 14' -O return tube boiler stack and fittings taken to Arkoal in Sec. 28 T 5 R 32 W on Frisco Railroad, Sebastian County, Arkansas, which was removed from the property of the Denman Coal Company at its mine No. 1, located at Burma, Ark., on or about March 1, 1911, this being the second boiler removed from this property to the Coronado Mine.

This property while in possession of the party of the secont part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease the machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property, sub-let, loaned or be made use of to or by any other individual, partnership or corporations without the written consent of the party of the first part being first obtained.

3157 In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease the party of the second part shall, at his own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental,

the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 27th day of March, 1911.

DENMAN COAL COMPANY,
By H. Denman, Pres.

CORONADO COAL COMPANY,
By C. H. Finley,
Acting Auditor."

Q. I hand you a paper marked Plaintiffs Exhibit No. 127, and will ask you what that is.

A. That is a lease for sixteen pit cars of the Mammoth Vein Coal Company to the Coronado Coal Company.

Mr. Drinker: I offer that paper in evidence, Exhibit 127.

(Exhibit 127 so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 127.

"Mine Car Lease

3158 between

Mammoth Vein Coal Company and Coronado Coal Company.

For and in consideration of $1.00 per month per car the Mammoth Vein Coal Company hereby leases to the Coronado Coal Company Sixteen (16) mine cars for a period of one (1) year from date. It being understood that the Coronado Coal Company were to keep these cars in repair and return them to the Mammoth Vein Coal Company at any time the Mammoth Vein Coal Company wishes them and in and good repair as when rented to the Coronado Coal Company.

The Mammoth Vein Coal Company shall have the right at any time to demand the return of these cars and the Coronado Coal Company shall return them within 15 days after receiving notice to return the cars in as good repair as when received.

The amount of rental shall be paid on or before the 25th of the month for the proceeding month. In case any car is

destroyed while in possession of the Coronado Coal Company the Coronado Coal Company shall either pay the Mammoth Vein Coal Company the cost price of the car or furnish them a car to take its place of the same type and as good as when received.

MAMMOTH VEIN COAL COMPANY
By (Signed) H. Denman.

CORONADO COAL COMPANY,
By (Signed) H. Denman.

Midland, Ark, January 3, 1910."

Q. I hand you a paper marked Plaintiffs Exhibit 128, and will ask you what that is?

A. A lease from the Hartford Coal Company to the Coronado Coal Company for forty-five mine cars.

Mr. Drinker: I offer Exhibit 128 in evidence.

3159 (Exhibit 128 so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 128.

"Mine Car Lease

between

Coronado Coal Company and Hartford Coal Company

For and in consideration of $1.00 per month per car the Hartford Coal Company hereby leases to the Coronado Coal Company Forty Five (45) mine cars for a period of one (1) year from date. It being understood that the Coronado Coal Company are to keep these cars in repair and return them to the Hartford Coal Company at any time the Hartford Coal Company wishes them and in as good repair as when rented to the Coronado Coal Company.

The Hartford Coal Company shall have the right at any time to demand the return of these cars and the Coronado Coal Company shall return them within 15 days after receiving notice to return the cars in as good repair as when received.

The amount of rental shall be paid on or before the 25th of the month for the proceeding month. In case any car is destroyed while in the possession of the Coronado Coal

Company the Coronado Coal Company shall either pay the Hartford Coal Company the cost price of the car or furnish them a car to take its place of the same type and sa good as when received.

HARTFORD COAL COMPANY,
By (Signed) H. Denman.

CORONADO COAL COMPANY,
By (Signed) H. Denman.

Midland, Ark., January 3, 1910."

3160 Q. I hand you a paper marked Plaintiffs Exhibit No. 130, and I will ask you if that is the original lease of the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company dated November 10, 1905.

A. Yes, sir, this is a lease for the 360 acres at Mammoth Vein Mine No. 1.

Q. That is one of the leases that was cancelled by order of the Court, as to which you testified this morning?

A. Yes, sir.

Q. And the lessor has entered those premises and taken possession since then? A. He has.

Mr. Drinker: I offer this lease, Plaintiffs Exhibit 100 in evidence,—when I said 130, should have said 100, which is the original lease of the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company dated November 10, 1905.

(Exhibit 100, so offered in evidence is in words and figures following, to-wit:)

3161 Plaintiffs' Exhibit 100

Lease of Coal Lands.

This Agreement, made this Tenth day of July, A. D. 1905 by and between the American Smokeless Coal Company, a corporation created under the laws of the State of New Jersey, the Midland Valley Railroad Company, a corporation created under the laws of the State of Arkansas, which corporations are hereinafter designated "lessors", of the first part; and the Mammoth Vein Coal Mining Company, a corporation created under the laws of the State of West Virginia, hereinafter designated "Lessee", of the second part,

Witnesseth:

That, Whereas, the said Lessors have become and are the owners of the coal lands hereinafter described, which they

acquired for the purpose of aiding in the construction of the line or railroad of the Lessors, and are interested in giving said line of railroad the tonnage from said coal lands; and,

Whereas, the said Lessors are interested in the largest production of coal and coke from said mines to the end that they may receive the tonnage of the coal mines and the coke manufactured thereon.

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

First. The said Lessors, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the said Lessee to be paid and performed have leased, demised and let, and do hereby lease, demise and let, unto the said Lessee for the
3162 term of thirty years from the day of August, 1905, the following premises, rights, easements and privileges; that is to say:

Second: The exclusive right to dig for, mine, remove and dispose of the coal in, under and upon the certain tract of land situate in Sebastian County, in the state of Arkansas, and more particularly described as follows:

The Southwest diagonal halves of Lots 8 and 14; Lots 3, 10, 11, 12, 13, and 17 of the North ½ of Section 2 and Lots 7 and 14 of the North ½ of Section 3, Township 4 North, Range 32 West, containing 360 acres, be the same more or less.

Third: The right to cut and use, from time to time, for the purpose of the said mining operation, including the construction of such buildings, roads and structures as may be necessary in the conduct of the same, timber less than twelve (12) inches in diameter, measured four (4) feet from the ground, growing upon that portion of the above described tract of land described as follows:

The Southwest diagonal halves of Lots 8 and 14; Lots 3, 10, 11, 12, 13 and 17 of the North ½ of Section 2 and Lots 7 and 14 of the North ½ of Section 3, Township 4 North, Range 32 West, containing 360 acres, be the same more or less.

Fourth: The right to erect miners' houses, tipples and such other buildings or works, including water supply reservoirs, as may be necessary in the operation of the same

mine, and to erect and operate coke ovens upon that portion of the said tract described as follows:

3163 The Southwest diagonal halves of Lots 8 and 14; Lots 3, 10, 11, 12, 13, and 17 of the North ½ of Section 2 and Lots 7 and 14 of the North ½ of Section 3, Township 4 North, Range 32 West, containing 360 acres, be the same more or less.

Together with right to dig, hew and use, for the purpose of the said mining operations only, such building stone, fire clay and other buildings materials (timber excepted) as may be found upon the said tract of land last above described.

Fifth: The right to use such running water as may be found upon any of the tracts hereby leased, or found upon the surface which covers any of the coal hereby leased, to the extent that the Lessors have the right to use the same: Provided, such use of the said water in no way interfere with its use on other land now owned or which may hereafter be acquired by the said Lessors.

Sixth: The said Lesors hereby covenant and agrees to and with the said Lessee that it shall and may, at all times hereafter during the continuance of the term hereby granted, peacefully and quietly have, hold possess and enjoy the premises and exercise the rights hereby demised, without let or hindrance by or from the said Lessors or by or from any person or persons lawfully claiming the same or any part thereof by, from or under them.

Seventh: The said Lessors hereby retain and reserve the right, and the Lessee hereby covenants that the said Lessors shall have the right, by their officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect,
3164 examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessors, not less frequently than once in six months, with an accurate copy of said map.

Eighth. The said Lessors further reserve during the continuance of this lease, for themselves and their assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises

for roads, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads, railways, waterways and side tracks constructed by the said Lessee upon the herein demised premises as provided hereinafter in this paragraph. Provided that proper compensation shall be made by the said Lessors and their assigns and Lessees, and any and all of them, for such use of said tracks, roads, railways, waterways and side tracks constructed by the said Lessee, such proper compensation, if not mutually agreed on, to be determined by arbitration as hereinafter provided.

Ninth: It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this and, among others, the Lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to
3165 insure the eventual mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of assuring this end to the Lessors with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of the said entries, gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by first-class mining methods, or until the Lessors give their consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repay any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first-class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the Lessee shall conduct no stripping operation on the coal beds hereby demised without the written consent of the Lessors being first had, and that the Lessee shall leave intact at all times a strip

of coal fifty yards in breadth next adjoining the [the]
3166 boundaries of the demised premises, except where the said strip is penterated by the principal slope and air course at the outcrop of the coal bed.

That the Lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference either with the use of the said Lessors of the surface covering the coal hereby leased, excepting that surface hereby demised, or with land of the said Lessors bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessors now have standing or may hereafter cause to be constructed on the said surface of bounding lands.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and from dangerous gases.

Tenth. The Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the state of Arkansas regulating the mining of coal, and agrees to protect the Lessors against the violation of said laws by said Lessee.

Eleventh. As a part of the consideration for this lease the said Lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby
3167 agrees to protect and save harmless the said Lessors and each of them from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mine.

In consideration of the premises and as an inducement to the said Lessors to make this agreement, and to build said line of railroad and furnish the necessary spurs, side tracks and switches at the tipple of the said Lessee for the accommodation of the Lessee in the handling of its business, said Lessee hereby agrees that the said Lessors, their successors and assigns, shall not be liable for or on account of any loss or damage which may at any time in any manner arise to the said Lessee or its successors or assigns, by reason of fire communi-

cated to the buildings of said Lessee or its assigns, now erected or hereafter to be erected, or the contents thereof, or to the property of any kind owned or stored by said Lessee along such side tracks, spurs or switches, by the locomotives, trains or cars of the Lessors, their successors or assigns, or arising in any manner from the operation of such side tracks or switches, and to that end the said Lessee and its assigns, will make no claim against the Lessors, their successors or assigns, for any loss, damage, charge or expense of any kind that may grow out of any fire set or communicated by the locomotives, trains or cars of the Lessors upon or along said railroad, spurs, side tracks or switches.

Twelfth. The said Lessee covenants that it will at the termination of this lease, deliver up and surrender to the
3168 said Lessors to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, [opengins], tramways, inclines, chutes, tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever, in good working order and repair; but on such termination of this lease the working tools, and implements used in mining, together with all machinery, miners' houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said Lessees shall be and remain the property of the said Lessee. But it is hereby expressly agreed that upon such termination of this lease the said Lessors shall have the right as regards the said working tools, mining implements, machinery, tracks, pit cars, rails and miners' houses, declared as aforesaid to be the property of the said Lessee, to purchase the same from the said Lessee at a fair market price, to be determined, if not mutually agreed upon, by arbitrators as hereinafter provided for. If the said Lessors shall not avail themselves of such right of purchase, then the said Lessee may remove the same, provided all royalties then due the said Lessors by the said Lessee be paid and all and singular the other covenants and agreements of this lease be performed, such right of removal, however, to terminate ninety (90) days after the termination of said lease.

Thirteenth. The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or transfer the same or any part thereof, or sublet or demise the said
3169 premises or any part thereof, to any person or persons or corporation, whatsoever, without the written consent of the said Lessors, under their seals, first had and obtained,

but said Lessee may construct necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee.

Fourteenth. The said Lessee agrees to commence to drive a slope toward the premises herein demised within one month of the date hereof and to thereafter continue the driving of said slope to and through the premises herein demised with reasonable expedition.

Fifteenth. The said Lessee hereby covenants and agrees to pay to the said Lessors a rent or royalty equal to eight cents per ton on each and every ton of two thousand (2000) pounds of coal mined or dug from the demised premises. But the said rent shall amount to not less, during any certain period, than the minimum rental prescribed hereinafter for said period.

The minimum royalty throughout the year commencing Jnuacy 1st, 1906, shall be Twelve Hundred ($1200) Dollars, and in addition thereto, the Lessee shall pay the Lessors eight cents (8¢) per ton of two thousand (2000) pounds on all coal mined or dug from the demised premises in excess of fifteen thousand (15000) tons, during the said year.

3170 The minimum royalty throughout each and every succeeding year during the term of this agreement shall be Twenty-Four Hundred ($2400) Dollars, and in addition thereto, the Lessee shall pay to the Lessors eight cents per ton of two [thousnd] (2000) pounds on all coal mined or dug from the demised premises in excess of thirty thousand (30,000) tons, during any of said years.

Sixteenth. And the said Lessors, if they so [electe], shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessors may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Lessors or the said Lessee, then such dispute shall be [setteld] by testing the said scales by government weights.

The said Lessee further covenants and agrees to furnish within five (5) days from the last day of every calendar month, at the office of the Lessors in Fort Smith, Arkansas, a report properly authenticated, showing the coal mined or dug and used or removed from the said mine during the preceding

calendar month, and to pay to such person or corporation as said Lessors shall direct the amount of the rent or royalty due for the said preceding month; and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall be ascertained, an account rendered for the same and payment made at the rate above named.
3171 And the Lessee covenants that it will keep a book or books of account of the mining and shipping of coal or coke, and that said book or books shall be open to the inspection of said Lessors and their agents and attorneys for the purpose of comparing and verifying the accounts rendered.

Seventeenth. Should the royalty on coal mined in any year not amount to the minimum rental for that year, then the said Lessee covenants and agrees that it will pay to the said Lessors dead rentals so that the same shall equal the minimum rental aforesaid, but the said Lessee shall have the privilege of mining during the next succeeding year, free from royalty, such a quantity of coal over and above the quantity which will yield the said minimum rental for that year, as will in royalties reemburse the said Lessee for the dead rentals paid during the preceeding year.

Eighteenth. The Lessee shall pay royalties or rentals as set out above as follows:

The minimum royalties shall be payable quarterly in advance, on the first days of January, April, July and October of each year.

The royalties or rentals in excess of one-twelfth (1/12) of the minimum annual royalties or rentals, shall be paid on the 20th day of each calendar month next succeeding that in which the coal was mined, and shall be paid in both cases at the principal office of the Lessors at Fort Smith, Ark.

Nineteenth. The said Lessee covenants and agrees to
3172 pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

Twentieth. Any difference as to the proper manner of mining or as t the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining opera-

tion, and any other matter herein specifically referred to arbitrators, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between the parties hereto touching any matter or thing to be done or performed by either hereunder, the same shall be determined by arbitration in the following manner: The party alleging such nonperformance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to set hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either
3173 party, be appointed by the Judge of the United States Circuit Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

Twenty-first. The said Lessee hereby covenants and agrees to ship all coal and coke mined from or made upon the demised premises to or towards its market or destination by the railroad of the Lessors and such connecting line or lines as the Lessors shall prefer or select for this purpose, an and to more fully effectuate this the said Lessee does hereby grant to the said Lessors and to their successors and assigns, the right to consign or rout all coal and coke so mined and made and delivered to said Lesors for shipment by said Lessee by whatever line or lines or railroad the said Lessors or their successors or assigns, may prefer or select; Provided always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided further, that the initial carried for all such coal and coke shall be the said Midland Valley Railroad Company, or its successors or assigns, and the said Lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said Lessors, their successors or assigns, as liquidated damages, for a breach of contract, the sum of twenty-five (25¢) cents in the case of coal and forty (40¢) cents in the case of coke.

Twenty-second. The Lessors agree to furnish the Lessee railroad cars at the tipple of the Lessee in sufficient
3174 numbers so that the said Lessee shall be able to operate its mine not fewer hours per month than ninety per cent (90%) of the hours per month the mines are operated of any other person or corporation on the railroad or the lessors, including the mines of the Lessors. Cars of foreign roads shall be held to apply as well as home road cars.

Twenty-third. It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessors shall, at their option, after sixty (60) days' notice to the Lessee, have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation.

Twenty-fourth. In the event of such termination of this lease for a breach of contract by the Lessee, the said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said Lessee has made full satisfaction to the Lessors for any and all damage which they may sustain by reason of such delay or refusal to comply with the terms of this lease, and in that event none of said properties aforesaid shall be removed from said premises until all royalties and other payments due the Lessors hereunder shall have been paid to the said Lessors; otherwise such coal, tools, machinery
3175 and property shall become the property of the said Lessors. And in the event of any controversy arising out of any matter in this paragraph contained, the same shall be referred to the board of arbitrators, as hereinbefore provided, and all said properties shall remain on said premises until a decision is reached by the arbitrators.

Twenty-fifth. It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said Lessors to distrain for rent due and in arrears under the terms of this lease.

Twenty-sixth. It is hereby agreed that all rights vested in the said Lessors by this lease shall pass to and vest in their successors or assigns, and that all covenants and agreements on the part of the said Lessee to be kept and performed shall be kept and performed by the said Lessee and by its

heirs, executors, administrators and assigns, or by the successors and assigns of the Lessee if the Lessee is a corporation, for the benefit and advantage of the Lessors and their successors and assigns.

Twenty-seventh. It is hereby agreed that the said Lessee shall keep the said Lessors informed of the place of its offices and the names of its agents, whether in this state or elsewhere; and that the said Lessor shall keep the said Lessee informed of any change in or transfer of the said Lessors under this lease.

Witness the hands and corporate seals of the parties hereto in duplicate, each as original, the day and date first
3176 bove written.

MIDLAND VALLEY RAILROAD COMPANY,
Attest: By
H. E. Yarnall, Secretary. C. E. Ingersoll, President.
(Seal)

AMERICAN SMOKELESS COAL COMPANY,
Attest: By
H. E. Yarnall, Secretary. C. E. Ingersoll, President.
(Seal)

Both of said corporations are designated in this contract as "Lessors."

MAMMOTH VEIN COAL MINING COMPANY,
Attest: By
R. Gully, Jr., Secretary. Heber Denman, President.
(Seal)

Designated in this contract as "Lessee"

State of Pennsylvania
County of Philadelphia—ss.

Be It Remembered, that on this day, before me, the subscribed, a Notary Public wihtin and for the County and State aforesaid, personally appeared before me, C. E. Ingersoll and H. E. Yarnall, President and Secretary, Respectively, of the Midland Valley Railroad Company, a corporation, to me personally well known as such President and Secretary, and acknowledged that they had executed the above and fore-

going instrument for and on behalf of the said Com-
3177 pany, and as its and their free act and deed for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such Notary Public, this Tenth day of July, 1905.

(Seal)

OSCAR H. PRICE,
Notary Public.

My commission expires at the end of the next session of the Senate.

State of Pennsylvania
County of Philadelphia—ss.

Be It Remembered, that on this day, before me, the Subscriber, a Notary Public within and for the County and state aforesaid, personally appeared before me C. E. Ingersoll and H. E. Yarnall, President and Secretary, respectively, of the American Smokeless Coal Company, a Corporation, to me personally well known as such President and Secretary, and acknowledged that they had executed the above and foregoing instrument for and on behalf of the said Company, and as its and their free act and deed for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and seal as such Notary Public this Tenth day of July, 1905.

(Seal)

OSCAR H. PRICE,
Notary Public.

My commission expires at the end of the next session of the the Senate.

3178 State of Arkansas
County of Sebastian—ss.

Be It Remembered, That on this day before me, the undersigned, a Notary Public within and for the County and State aforesaid, personally appeared Heber Denman and R. Gulley, Jr., President and Secretary, respectively, of the Mammoth Vein Coal Mining Company, and acknowledged that they had executed the above and foregoing instruments as their free act and deed for the consideration and purposes therein mentioned and set forth and as the free act and

deed of said Company, for the same purposes and consideration, under the authority of their Board of Directors.

. . . . . .

. . . . . .

Witness my hand and notarial seal this, 2 day of Nov. 1905.

(Seal) J. M. B. HARP,
Notary Public.

My commission expires 8/27/07.

3179 Q. I hand you Plaintiffs Exhibit No. 101, and will ask you whether that is a supplement lease, plaintiffs Exhibit 100.

A. Yes, sir, this is supplementary to that lease that just preceded.

Mr. Drinker: I offer Plaintiffs Exhibit No. 101 in evidence.

(Exhibit 101 so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 101.

"Supplement To Lease Dated July 10th, 1905.

This Supplemental Agreement entered into this 19th day of June, A. D., 1909 by and between the Cherokee Construction Company, party of the first part, and the Mammoth Vein Coal Mining Company, party of the second part, Witnesseth:

Whereas on the 10th of July 1905 the American Smokeless Coal Company one of the parties of the first part and the Mammoth Vein Coal Mining Company, party of the second part, entered into a lease of coal land described in said lease.

And Whereas since said date the Cherokee Construction Company has become the owner of all of the interest of the American Smokeless Coal Company under said lands, and in and to the lands described in said lease.

And Whereas the party of the second part herein has paid to the party of the first part herein, the following minimum royalties on said leased lands, namely:

For the year 1906	$1,200.00
For the year 1907	2,400.00
And for the year 1908	2,400.00
Total	$6,000.00

And Whereas it is desired that the party of the sec-
3180 ond part herein shall have a credit for said payments on future royalties, and to make certain other modifications in said lease.

Now Therefore the parties hereto enter into the following covenants and agreements, to-wit:

1. That said Six thousand Dollars ($6,000.) heretofore paid shall be applied on the future royalties accruing under said lease, and that on and after July 1st, 1909 the party of the second part is not to pay any more royalties under said lease until the royalties accruing under the terms of said lease shall amount to Six Thousand ($6,000.) and that when said Six thousand Dollars $6000.) is thus applied and absorbed, the party of the second part herein shall thereafter pay to the party of the first part herein, the royalties as provided in said lease of date July 10th, 1905.

2. It is further agreed by and between the parties hereto, that the party of the second part herein shall be, and is hereby, permitted to remove or have removed an amount equal to not more than one third of the coal in said leased lands, through what is known as the Hoffman coal mine, said coal to be shipped over the Midland Valley Railroad as initial carrier. It is also agreed that the second party may drive or permit to be driven entries and air courses through the boundary pillars of its lease to the lands of the Hoffman Coal Company and of the Mammoth Vein Coal Company.

Witness the hands and corporate seals of the parties hereto in duplicate, each an original, the day and date first above written.

CHEROKEE CONSTRUCTION COMPANY.
By (Signed) C. E. Ingersoll,
Vice-President.

(Corporate Seal)

3181 Signed (Signature illegible.)

MAMMOTH VEIN COAL MINING COMPANY.
By (Signed) F. Bache,
President.

(Corporate Seal)

Attest:
Heber Denman,
Secy."

Q. I hand you Plaintiffs Exhibit 107, and will ask you whether that is a lease dated December 19, 1906 by Cherokee Construction Company to the Prairie Creek Coal Mining Company, and what tract that covers.

A. This is a lease from the Cherokee Construction Company to the Prairie Creek Coal Mining Company for the land where 3 and 4 mines are located.

Q. What acre tract is that? A. 687 acres.

Mr. Drinker: We offer that lease in evidence, Plaintiffs Exhibit No. 107.

(Exhibit No. 107, so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 107.

"This Agreement made and entered into this 19th day of December, 1906, by and between the Cherokee Construction Company, a corporation created under the laws of the Territory of Oklahoma, hereinafter designated "Lessor," of the first part, and the Prairie Creek Coal Mining Company, a corporation created under the laws of the State of Arkansas, hereinafter designated "Lessee," of the second part,

Witnesseth:

That Whereas, the Lessor is the owner of the following
3182 described coal lands situated in Sebastian County, State of Arkansas, to-wit:

Lots one (1), two (2), nine (9), eleven (11) and twelve (12), Section one (1), Lot seven (7) and the Northeast diagonal halves of Lots eight (8) and fourteen (14), Section two (2) all of Lots ten (10) except the North two hundred and eighty (280) yards thereof and that part of said lot west of the Midland Valley Railroad right of way, in Section one (1); all in Township Four (4) North, Range Thirty-two (32) West; and three (3) acres, more or less, out of the west side of Lot two (2), Section six (6), Township Four (4) North, Range Thirty-one (31) West, being all of said lot west of James Fork Creek; being three hundred and forty-eight and forty-eight hundreths (348.48) acres, more or less, which the Lessor owns in fee simple;

The North two hundred and eighty (280) yards of Lot ten (10), Section one (1), Township Four (4) North, Range Thirty-two (32) West, and that part of said lot west of the Midland Valley Railroad right of way, being twenty-five and one-tenth (25.1) acres, more or less, in which the Lessor owns the mineral right;

Lots three (3), four (4), five (5), six (6), seven (7), eight (8), thirteen (13) and fourteen (14), Section one (1), Township Four North, Range Thirty-two (32) West, being three hundred and thirteen and thirty-six hundreths (313.36) acres, more or less, which the Lessor holds under a coal lease for a term of twenty (20) years from May 31, 1900;

on which lands are situated Mines Nos. 3 and 4 of the Lessor; and

Whereas, the Lessee desires to lease said coal lands, together with all buildings and machinery situated thereon or therein, including miners' houses, warehouses and all other buildings and improvements thereunto appurtenant;

Now, therefore, the parties hereto enter into the following covenants and agreements, to-wit;

1. The Lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the Lessee to be paid and performed, has leased, demised and let, and does hereby lease, demise and let unto the said Lessee all of the property above described and all of the rights and privileges of the Lessee in and to all of said property for the term during which the lands hereby leased and demised shall contain coal in sufficient quantities to make it practicable, from a mining point of view, to mine the same, under the terms of this lease, together with certain miners' houses and warehouses situated on said land and upon the South hald of the South half of Section thirty-one (31) and the South half of the South half of Section thirty-two (32), Township Five (5) North, Range Thirty-one (31) West, including the right to use said miners' houses and warehouses in connection with the mining of coal on said leased premises for the period of this agreement, a schedule and inventory of all of which property is attached hereto and made a part hereof; Provided that the Lessor reserves the right to remove said miners' houses and other buildings from the land in said Sections thirty-one (31) and thirty-two (32) at any time when it may desire to mine the coal on or under said land, and to move the same to some other convenient place upon the land hereby leased.

2. As a consideration of the said lease, the Lessee covenants and agrees to pay the Lessor a royalty of seventeen and one-half (17½) cents per ton on all coal mined from said land and premises, which royalty shall be on the basis of a minimum tonnage and output of one hundred

thousand (100,000) tons per year during the term of this lease or until the workable coal is exhausted by ordinary mining methods, as herein provided, This covenant of the Lessee to produce a minimum output of one hundred thousand (100,000) tons per year is conditioned upon the Lessee receiving a sufficient supply of cars to handle such output, after having made all due and proper effort to obtain such car supply and being unable to secure enough cars to handle such output; and in case the car supply apportioned to these mines of the Lessee during any one year shall be insufficient to carry the minimum tonnage for such year, a pro rata rdeution shall be made in the minimum tonnage. The obligation, however, to produce this minimum tonnage shall be further subject to abatement in case there is a general strike in the district where said mines are situated, the abatement from said cause to be apportioned according to the length of said strike.

3. The royalty herein provided for of seventeen and one-half (17½) cents per ton shall be paid upon the minimum tonnage provided for quarterly in advance, and shall be paid within ten days after the beginning of the quarter, and the royalty at the rate of seventeen and one-half (17½) cents per ton, on the excess, if any, over said minimum tonnage herein provided for, for any previous quarter, shall be added to the advanced minimum royalty for the next succeeding quarter, and a separate and distinct settlement shall be made for each quarter. Should the amount of coal mined in any one year not amount to the minimum tonnage herein provided for, it is agreed that the Lessee shall have the privilege of mining during the next succeeding year such a quantity of coal in
3185 excess of the minimum tonnage required for that year as will make up the deficiency for the previous year without paying any excess royalty thereon for that year.

4. The Lessee covenants and agrees that the mines on said lands shall be worked continuously so far as the general demand for coal warrants; that is to say, that they shall be worked the same as other average mines controlled by the Lessee or by other operators on the line of the Midland Valley Railroad.

5. In the event of coal not being mined up to the minimum in any one year, it is agreed by the Lessor that the Lessee herein shall be allowed to mine free of royalty in the next succeeding year only sufficient coal to make up the amount of minimum royalty paid in excess of coal mined during the preceding year.

6. The Lessee agrees at the termination of this lease or agreement to return the plant and property pertaining to said mines and leased premises to the Lessor in as good condition as when received, reasonable wear and tear excepted.

7. The Lessee shall have the use of all machinery, material and equipment of all kind now on and in said mines, but shall maintain and renew the same at its own cost and expense, and shall at its own cost and expense provide all new machinery, equipment and material of all kinds and character, and shall bear the whole cost and expense of developing and operating said mines until the same are worked out, as herein provided, and all new machinery, pit cars, steel rails or other equipment paid for and installed by the Lessee shall be its property, and at the expiration of this lease the Lessee shall have the right to remove the same within a reasonable
3186 time thereafter.

8. The Lesee is hereby given the privilege of abandoning said Mine No. 3 so far as hoisting coal through the present slope is concerned whenever the workings are connected with those of Mine No. 4, so that the coal mined in said Mine No. 3 can be hoisted through Mine No. 4 shaft, provided the Lessee shall make proper provision to prevent water from said Mine No. 3 coming into the workings of Mine No. 4; Provided, the Lessee shall have the right to handle the water of Mine No. 3 through Mine No. 4; and in such case whatever machinery or property connected with Mine No. 3 which cannot be utilized by the Lessee in the operation of said mines shall be delivered back to the possession of the Lessor for whatever disposition it may desire to make of the same.

9. The Lessor agrees to keep all insurable property in connection with said mines insured, at the cost, however, of the Lessee, and the Lessee agrees that the Lessor may make bills upon it for such insurance, which the Lessee agrees to promptly pay; and in case of fire the Lessor agrees to collect the loss from the insurance company or companies, and to pay the same to the Lessee, all of which sums, however, shall be used by the Lessee to replace the property burned or destroyed by such fire.

10. The said Lessee hereby retains and reserves the right, and the Lessee hereby covenants that the said Lessor shall have the right, by its officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect, examine and make surveys thereof, and the said Lessee doth covenant and agree to

accurately survey, not less frequently than once in
3187 every six (6) months, all new mine workings, entries,
air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessor, not less frequently than once in every six (6) months, with an accurate copy of said map.

11. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum pro portion of all the coal contained therein; and to accomplish this end, among others, the Lessee hereby expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised, and for the purpose of assuring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of the said entries, gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by any first class mining methods, or until the Lessor gives its consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings under ground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view of the fullest possible development of the demised premises; and that the Lessee shall maintain
pillars in the mine or mines of dimensions fully suffi-
3188 cient to support the roof and shall not draw said pillars
until such time as the coal between them and the boundary of the demised premises is mined out.

The Lessee shall maintain all buildings and machinery, and other appurtenances to the mines, in good condition and working order, and the Lessee further covenants that it will not do or permit, or suffer to be done, any damage or injury to the said premises, property and appurtenances.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and from dangerous gases.

12. The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the Lessor against the violation of said laws by said Lessee.

13. As a part of the consideration of this lease the Lessee hereby covenants and agrees to assume all liability in the operation of said mines and hereby agrees to protect and save harmless the said Lessor from any claim, damage, persanaly injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mines and to assume all the legal liability of an independent contractor or operator.

14. The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or demise the said premises or any part thereof to any person or persons or corporation whatsoever, without the written consent of the said Lessor, under its seal, first had and obtained; but said Les-
3189 see may erect necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee and may also sub-let any of the buildings covered by this lease.

15. And the said Lessor, if it so elects shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said Lessor may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and should any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Lessor or the said Lessee, then such dispute shall be settled by testing said scales by Government weights.

The said Lessee further covenants and agrees to furnish within ten (10) days from the last day of every calendar month, at the office of the Lessor on the form furnished by the Lessor, for that purpose, a report properly authenticated, showing the coal mined or dug and used or removed from the said mines during the preceding calendar month; and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall be ascertained, an account rendered for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account and correct records of the mining and shipping of coal and coke, and that said book or books

and records shall be open to the inspection of said Lessor and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

16. The said Lessee covenants and agrees to pay all
3190 taxes that may be assessed against the demised premises and the improvements thereon and upon the coal mined or coke manufactured during the continuance of this lease, after the year 1906; the Lessor agreeing to pay the taxes for the year 1906.

17. Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operations, and any other matter herein specifically referred to arbitrators, or any question arising under this lease or as to the consturuction thereof, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between the parties hereto touching any matter or thing to be done and performed by either party hereunder, the same shall be determined by arbitration in the following manner: The party alleging such non-performance or breach by the other or desiring any question hereunder submitted to arbitration shall give ten (10) days' notice in writing to the other party of the appointment of an arbitrator to act hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute,
3191 the third member may, on application of either party, be appointed by the Judge of the United States Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conslucive upon the parties hereto.

18. The said Lessee hereby covenants and agrees to ship all coal and coke mined from or made upon the demised premises to or towards its market or destination by the Midland Valley Railroad and cush connecting line or lines as the said Midland Valley Railroad Company shall prefer and se-

lect for this purpose, and to more fully effectuate this the said Lessee does hereby grant to the said Lessor, and to its successors and assigns, the right to consign or route all coal and coke so mined and made and delivered to said Midland Valley Railroad Company for shipment by said Lessee by whatever line or lines of railroad the said Railroad Company, or its successors or assigns, may prefer ot select; Provided Always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided Further, that the initial carrier for all such coal and coke shall be said Midland Valley Railroad Company, or its successors or assigns, and the said Lessee covenants an dagrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said Midland Valley Railroad Company, its successors or assigns, as liquidated damages, for a breach of contract, the sum of twenty-five (25) cents in the case of coal and forty (40) cents in the case of coke.

19. It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease
3192 and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at its option, after sixty (60) days' notice to the Lessee, have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation; and in such case the Lessee shall restore to the Lessor said property in as good condition as it was on the date of this contract, ordinary wear and tear excepted, and shall forfeit to the Lessor, as liquidated damages, whatever machinery, property or improvements have been placed upon said land by the Lessee in the nature of permanent fixtures or that would, under the law, become part of the realty.

20. All of the covenants and agreements, terms and conditions of this lease and contract shall inure to the benefit of, and be binding upon the successors and assigns of the Lessor, and the successors and assigns of the Lessee, and each of them.

21. The royalty herein provided for shall begin January 1, 1907, and the first quarterly payment of the minimum royalty shall be due and payable on that date.

In Witness Whereof, the Lessor and Lessee have caused this instrument to be executed by their proper officers, thereunto duly authorized, and attested by their corporate seals, under authority of their respective Board of Directors, this the day and year first above written.

CHEROKEE CONSTRUCTION COMPANY,
By (Signed) C. E. Ingersoll,
V President.

(Seal)

Attest:
(Signed) H. E. Yarnell, Secretary.

3193

PRAIRIE CREEK COAL MINING COMPANY,
By (Signed) J. W. M. Boone,
President.

(Seal)

Attest:
J. D. Chastain, Secretary."

"Commonwealth of Pennsylvania,
County and City of Philadelphia—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public, duly commissioned and acting, within and for the said City of Philadelphia, C. E. Ingersoll, Vice President and H. E. Yarnell, Secretary, of the Cherokee Construction Company, a corporation to me personally well known to be such Vice President and Secretary, and acknowledged that they had executed the foregoing instrument as such Vice President and Secretary, for and on behalf of said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth.

Witness my hand and notarial seal, this the 22nd day of December, 1906.

(Signed) OSCAR H. PRICE,
Notary Public.

(Seal)

My Commission expires: February 2, 1910.

State of Arkansas,
County of Sebastian—ss.

Be It Remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, T. W. M. Boone and

J. D. Chastain, to me personally well known to be the
3194 President and Secretary respectively, of the Prairie Creek Coal Mining Company, a corporation, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal, this 19th day of December, 1906.

(Signed) FRANK L. LYMAN,
(Seal). Notary Public.

My Commission Expires: Oct. 9, 1907."

Q. I hand to you the paper marked Defendants Exhibit 15, and will ask you whether that is a copy of the inventory that was attached to that lease, or if you cannot state say so.
A. I believe that is a true copy of the inventory.

(Defendants Exhibit No. 15, not having been heretofore set out, is here set out in full in words and figures as follows, to-wit:)

3195 Defendants' Exhibit 15.

Inventory of Equipment at Mines 3 and 4, Leased to the Prairie Creek Coal Mining Co., by the Cherokee Construction Co., under Terms of Lease Dated January 1st, 1907, of which Lease this Inventory is made a Part.

Mine No. 3. (Outside)

1. Slope tipple, including one shaker, screen, one gravity screen with flat top bars, one weight basket, one rock trestle, one lever coal dump, one Monarch Scale (about 3 tons), one 3′ sheave wheel (Flange broken), one 4′ sheave wheel, one weigh room. Tipple and weigh room roofs not shingled.

Boiler Room.

1 Atlas boiler and stack, size of boiler 6′ x 21′, with fittings complete to supply steam to pumps, viz: to one pump in boiler room and to pumps in mine under drill hole, to Hoisting engine, fan engine and shaker screen engine.

1 Danville boiler, size 5′ x 30′ pattern 400, 2-21″ tubes. This boiler used for water tank (no grate bars)

1 Danville boiler, size 5′ x 30′ pattern 400, 2-21″ tubes, fitted and connected as an auxilliary to the Atlas boiler.

1 Steam whistle, size 6″ x 14″.
3196 1 Iron Wheelbarrow
1 No. 2 coal shovel
1 Hoe
1 Slash bar
1 Boiler slack car
1 Telephone and line to Mine 4.
1 Hooker pump #4401, size 5-½ x 3-¼ x 5 (Boiler feed pump) with 326′ of 2″ suction pipe.

18 Feet 1-½″ Rubber hose with 10″ brass nozzle.
1 Pair old chain tongs
11 Feet Chain.

Engine Room.

1 Pair Danville Hoisting Engines, and foundations, size of engines 14 x 18, geared about 1 to 5.

1 Drum 6′ diameter
1 Wire rope, estimated 1400′ size 1″.
1 Davy Safety lamp.
1 Clanny Safety lamp.
1 Tri Square.
1 Old hand saw.
1 1 Quart brass lubricator
1 Telephone (Out of repair and not connected)

Blacksmith Shop.

1 Forge
1 Tuyere Iron
1 Ripley and Bronson "Reliable" #2 Blower Engine, with steam connections, to fan line.
3197 1 Buffalo Blower #3
1 Anvil (About 130#, old)
1 Pipe Vise
1 Armstrong stock, with dies, 1″ x 1-½″ and 2″.
1 Armstrong tap 1¼″
1 Armstrong tap 1-⅛″.
1 Tap ⅞″.
1 Tap ⅜″.
1 Tap 1″.
1 Rod die ⅞″.

1 Ditto 1".
1 " 1-⅛".
1 " 1-¼".
1 Pipe die, adjustable (1 lever and socket broken).
1 Set dies 1-¼".
1 Ditto 1-½".
1 Barnes #3 Pipe cutter
1 Pipe stock and set 3" dies.
118 Feet old grass rope
1 Snatch block
12 Double sash.

Fan House Equipment.

1 Fan 16'
1 Fan engine 10 x 18

3198 In Yard.

1 Monarch track scale 38' long.

4 Axles, 4 wheels, 4 draw bars and 7 binders for pit cars.

1 Nagle engine 7 x 10 for shaker screen, belt worn out and following fittings missing:—1 oil cup, 1 butterfly stem, 1 nut, 1 stud, 4 flange bolts, 1-½", and 1-16" nipple, 1 bushing, 3" x 2", 1 flange 2½"

3 Dirt shovels

2 Perforated sheets 3½' x 6' with 3½ round perforators.

1 Pinch bar.

Pumping Station on Creek South of Mine No. 3.

1 Hooker pump size 5-1.2 x 3-½ x 5, #4388 (1 spool broken)

1" pipe 150')
1-¼" pipe 21')
1-½" pipe 159') Steam, suction and discharge lines.
2" " 710')
2 1½" " 249')
3" " 58')

Buildings at Mine No. 3.

1 Combination boiler and engine house, size 28' x 77', with addition attached 15'-6" x 48', walls 14', shingle roofs.

1 Blacksmith shop, size 52' x 24', 9' walls, shingle roof; with lean-to addition 8' x 9', leaky shingle roof.

1 Stable, 16′ x 32′, 9′ walls, shingle roof, with one lean-to addition 8 x 12 and one lean-to addition 10′ x 32′, shingle roofs.

3199 1 Fan house 16′ x 28′

1 R. R. track scale weigh house, 10′ x 15′, 9′ walls, shingle roof.

1 Stone Powder Magazine, 14′, x 16′, 9′ walls, shingle roof

1 Frame Store building, 56′ x 16′, 9′ walls, shingle roof In bad condition, window lights all out.

1 Warehouse, 48′ - 6″ x 26′, connected to store. In bad condition window lights all out.

Track Laid On Tipple And In Yard.

12 Lb - rail 242 lineal feet.

16 Lb - rail 589 lineal feet.

25 Lb - rail 494 lineal feet.

Street car rail, 60 lineal feet

2 Frogs and 2 switches, 25#

2 Frogs and 2 switches, 16#

Pit Cars In Yard.

35 Pit cars.

Condition Of Pit Cars (Outside)

1 Car minus 3 wheels, body spread and axle strap broken.

1 Car minus oil box cap, body spread and side board broken.

1 Car minus spread and top board broken.

1 Car minus 4 wheels, and end broken and minus 1 end iron.

1 Car minus 4 wheels end broken and minus 1 end iron.

1 Car minus 1 wheel.

1 Car minus rear cross iron and one end

1 Car minus 2 oil caps, one end broken and one side broken.

1 Car minus 4 wheels, one draw bar and one end.

3200 1 Car minus one oil cap

1 Car minus one wheel, one side spread and one board broken

1 Car minus two wheels and one draw bar

1 Car one side broken

1 Car minus four wheels, sides spread.

1 Car side broken, one end broken and sides spread.

1 Car minus 3 wheels and one end broken.

1 Car minus 1 oil cap, spread and one side broken.

1 Car minus 1 oil cap and end broken.

1 Car bottom broken,

1 Car minus one oil cap and spread

1 Car minus one oil cap, spread and side broken

1 Car minus bottom broken and spread

1 Car minus 2 oil caps, end broken and draw bar bent.

1 Car minus 1 end broken

1 Car spread

1 Car minus one oil cap and one end broken.

8 Cars O. K.

1 Car minus 1 wheel and 2 oil caps.

Mine No. 3 (Inside)

Pumps.

1 Knowles pump No. #42725-6 (Duplex) size 7½ x 4½ x 6. Water end worn out. Steam end apparently O K excepting stuffing box broken. Pump not in use.

1 Single pulling pump #8, size 12 x 7 x 14. Valve seat casting worn so that valve seats won't fit. Pump not in use.

1 Duplex Worthington Pump, #154411, size 10 x
3201 6 x 10.

i rod worn out. Upper and lower rocker arms badly worn, Pump in use.

1 Steam end to Hooker pump #4080, size 7½ x 4-½ x 10. Apparently in fair condition, excepting valve stem link broken.

1 Knowles Pump #43252-3, size 7½ x 4½ x 6. This pump is in fair condition, except rocker arms and valve stems badly worn. Pump in use.

Fairbanks-Morse Pump #7333, size 6 x 4 x 6. This pump had been submerged for three months and has not been put in commission since, is out of repair.

Pipe In Mine.

Including steam, suction and discarge from mouth of slope to pumping station (inside) thence to sump and surface at drill hole.

¾" pipe 24'

1-¼" pipe 40'

1½" pipe 129'

2" pipe 1354'

3" pipe 349'

Miscellaneous.

1 Detroit Lubricator (brass)

1 Ladle. 1 quart.

50# Old Brass pump rods.

6 Worn out water ends.

3202 Pit Cars Inside Mine.

7 Cars on double parting in 4th West Entry, two of which cars are apparently in good condition. The other 5 are in a badly damaged condition account of falls.

3 Cars in 4th East Entry, in bad condition.

3 Cars on double parting in 3rd West Entry apparently in good condition.

3 Cars in 3rd East Entry (2 on partings and 1 on entry) All badly injured by falls.

2 Cars on double parting in 2nd West Entry damaged by falls This makes a total of 18 cars visible in this mine.

16 additional cars are said to be in different entries, but could not be reached on account of falls.

Condition Of Slope And Entries And Estimated Amount Of T Iron And Street Car Ry. Iron Said To Be In This Mine, A Very Small Part Of Which Iron Was Visible When Inventory Was Being Taken. Same Being Mostly Covered By Falls Of Rock.

Main Slope:

515 Lineal feet street car iron track.

360 Lineal feet 25# T iron track

5 Slope frogs and switches Almost the entire length of slope is covered by falls of rock. Very little of the track is visible.

3203 Fourth West Entry.

This entry is driven 230 feet from slope to face, double parting made and the track rails that are visible on parting are 25#. Entry said to have 200 feet of 16# iron track, mostly covered by falls, but falls not heavy 4 rooms are turned on this entry and said to contain switches.

3 loose rails, each 20 feet long, 25# iron lying partly covered on parting.

Fourth East Entry.

This entry is driven 289 feet from slope to face, has 5 rooms turned into each of which is laid a room switch. Double parting 106 feet long, laid with 25# rails.
Main entry 183 feet of 16# iron track.
This entry is in a fairly good condition and has few falls on its entire length.

Third West Entry.

This entry is said to be 925 feet long and to contain 900 feet of 16# iron track, excepting double parting at slope, which latter is said to be laid with 25# iron rails. Entry said to contain 19 room switches.

Entire length of entry covered by large fall of rock and by water and track is invisible. This entry is in a very bad condition.

Third East Entry.

This entry is driven 1125 feet, and is said to have 1100 feet of # iron track therein, all of which is covered
3204 by heavy falls of rock. This entry is in a very bad shape.

Second West Entry.

This entry is driven to boundary line and is said to contain 1700 feet of iron track. Entire length of entry covered by falls of rock and by water. Track invisible.

Mine No. 4 (Outside)

1 Shaft tipple, including one gravity screen 6′ x 16′ (flat top bars), one double wooden shaker screen with perforated sheets, various sized perforations, and loose flat sheets to cover perforations.

1 Weigh basket with steam piston for operating door, 1 picking table with shed (size of picking table 26′ x 4′) 1 chute for domestic coal with 18 diamond top bars 5′ long and 1 pair Goose neck dumps made of 16# rails, 2-6′ sheave wheels. One pair self dumping cages (cages in bad condition). One dirt dump with trestle.

1 Ottumwa box car loader, #63, apparently complete.

1 Small picking table engine, size about 5 x 12 (no name)

1 Weigh room on tipple

1 Pair Monarch scales, capacity about 4 tons.

1 Steam radiator, 2′ x 3′, 9 double flues.

1 Shaker engine, mfd. by West Engine Co., Morriston, Pa. (About 16″ strokes.)

3205 Engine Room.

1 Pair Litchfield first motion hoisting engines, size 18 x 32

1 Drum, 6′ diameter

950 Feet wire hoisting rope, 1-1/8″, in good condition

1 Lubricator (senior.)

1 Full signal bell, 4″, with wire to bottom of shaft.

Boiler Room.

q Crescent boilers, pattern No. 30, size 5′ x 28′ with 2-19″ flues in each, complete, with stacks and fittings to dupply steam to Hoisting engines, shaker engine, box car loader, picking table, engine, radiators, weigh basket, pumps at bottom of shaft and feed pump in boiler room.

Grate bafs under No. 1 boiler not in good condition.

Both boiler fronts are broken and stone setting spread in front.

1 No. 2 Coal Shovel

1 Hoe.

1 Slash Bar

1 Hook.

1 Iron Wheelbarrow.

1 Radiator, size 2′ x 3-1.2″, with 10 double flues (not in use)

11 Testweights 50#

1 Boiler slack car.

24 Feet Rubber waterhose 1-½″

1 Gardner duplex feed pump, #8663, size 6x4x6, with suction line to small line near boiler house.

1 Hancock Inspirator.

2 Pairs old chain tongs.

3206 1 old 18″ Stillson wrench.

2 Pairs old Blacksmith tongs.

1 Small stock with dies ½″, ¾″ and 1″

1 Small stock with dies 5/8″

1 Small whistle stock for box car loader.

1 Squirt gun oiler.

1 Telephone and line from No. 4 boiler house to the MV R. R.

1 Wild Cat Whistle (Disconnected)

In Yard

Pit Cars.

32 Large pit cars.

15 Medium sized pit cars

4 Small " " "

34 Small sized pit cars leased to the Mammoth Vein Coal Coal Co.

Condition Of Pit Cars.

1 Small car front binder missing, and needs all new wood work.

1 Small car spread.

1 Medium car, 1 cap off, bottom and sides broken.

1 " " 4 caps " car spread.

1 " " spread.

1 " " 1 cap off, door broken.

1 " " 1 " "

1 " " 1 door broken.

1 " " 1 cap off, front door off.

1 " " 2 caps off, 2 top boards off, sides, both ends out.

1 Medium " spread and end out.

3207 2 Medium car, all ends out.

1 " " 1 end out and top board off 1 side.

1 " " 1 end out and 1 wheel broken.

1 Large car, 1 cap off.

1 " " 1 " " draw bar loose.

1 " " 1 " " 1 top side board broken.

1 " " 1 door and 1 end broken.

1 " " 1 door broken

1 " " 3 axles off and door broken

1 " " 3 wheels off.

1 " " 1 wheel off, 1 oil cap off, both ends broken.

1 " " 1 door and bottom broken.

1 " " 2 wheels off, both ends and bottom broken.

1 " " 4 caps off.

1 " " 1 door out and 1 end broken.

1 " " 1 door missing.

1 " " 1 door broken, 1 cap off and spread.

1 " " 1 door missing and spread.

1 " " 4 caps off and 1 door broken and spread.

16 " " ends all gone, top boards off sides cars dismantled, ostensibly for the purpose of remodeling.

Oil House.

150 Feet grass rope, 1-½"

5 Mule collars.

3 Sets pit harness complete except tail chains.

1 Brass hose coupling, 4"

1 " " " 2".

3208 Pipe Line from No. 4 Slope.

To No. 3 Mine and to No. 4 Shaft.

4130 feet 2" pipe, most of which is covered in ground.

Pipe Line from James Fork Creek to No. 4 Slope.

2800 feet 3" pipe, all of which is underground and invisible.

Mine Rails Outside.

12# iron rails, 230 lineal feet

16# " " 396 " "

25# " " 40 " "

2 Goose necks 12#

2 " " 20#

1 Switch and frog 16#

1 " " " 12#

Blacksmith Shop.

1 Cobb upright engine 8" stroke, belt worn out

1 Boynton and Hummer drill press, combination hand and power.

20 Assorted drills.

1 Boiler iron circular forge

1 14" grindstone in frame.

1 mounted emory wheels, 1-¼" x 10".

1 Pipe stock with ½" dies.

1 Bench vise, 6".

1 Pulley block, 6".

1 Adjustable iron rest.

36 Oil caps for pit cars.

3209 Yard.

1 Old sheave wheel, 6-½" diameter.

3 " " " 5 feet.

1 Perforated sheet, size 3' x 6-½' with ¾" x 1-½" holes

1 " " " 2' x 8' " 3" x 4" "

1 " " " 2' x 8' " 3-½" x 5" "

2 Dollies, 4" x 14" with 4" rollers.

1 Set Monarch R. R. track scales 42' long (platform and outside casing rotted)

1 Sight feed oil cup.

1 Hose strainer, 2".

4 Stud bolts, ¾" x 5".

75 Pounds scrap brass.

1 16' fan with blades, 24 braces and fan engine complete, except eccentric and connecting rod. (This fan and engine lying below tipple, alongside R. R. with dirt washed over part.)

1 R. R. truck push car.

5 Pit car axles with wheels.

Slope of Mine No. 4.

Boiler House.

1 John O'Brien boiler, size 6' x 18' with 70-4" flues, and stack. Boiler in good condition, and with fittings complete to supply steam to fan and hoisting engines.

1 Penberthy injector, #276481.

1 Hancock Inspirator.

1 Erie City Iron Works Boiler, size 2-½′ x 11′, 26-3″ flues. Stack rusted out.

1 Poker

3210 1 Slash Bar.

Engine Room.

1 Pair second motion hoisting engines, mfd by Murray Iron Works. Size 12″ x 12″. Geared about 5-½ to 1. (¼″ elbow for steam pipe missing.)

1 Drum, 4′, with friction brake.

2000 feet wire rope, 1″, for slope, old and badly worn.

Yard.

1 Pond (Cen, of dam washed

1 Old Boilersheel, size 9-½′ x 4-½′.

1 Comb. boiler and fire box, 2′-3″ x 6′. 24-3″ flues, no fittings, grate bars, nor stack.

2 Sheave wheels, 24″

Buildings at No. 4 Shaft.

1 Boiler room, size 28′ x 54′, 12′ walls, shingle roof.

1 Engine room, " 22′ x 30′, 16′ " " "

1 Box car loader, shed, size 18′ x 18′, 12′ walls, shingle roof.

1 Blacksmith shop, " 24′ x 48′, 12″ walls, shingle roof needs covering.

1 R. R. Track scale weigh room, size 6′ x 8′, 7′ walls, shingle roof.

1 Supply house, size 14′ x 14′, 12′ walls, sealed rough, shingle roof. Contains 5 windows, of which 1 sash and half the lights are missing.

1 Oil house, size 14′ x 14′, 19′ walls, shingle roof.

3211 Buildings at No. 4 Slope.

1 Boiler room, size 37′ x 26′, 10′ walls, shingle roof.

1 Shed attached " 7′ x 19′ board roof.

1 Engine room, size 14′ x 18′, 8′ walls, shingle roof.

1 Fan house " 16½′ x 35′, 24′ walls, shingle roof.

1 Addition " 6′ x 18′, 10′ walls, shingle roof (Fan engine room.)

Fan House Equipment at No. 4 Slope.

1 Crawford and McCrimmon Fan, size 7′ x 20′

1 " " " Horizontal fan engine, size 12 x24.

1 Lubricator, 1 quart.

Pumping Station of James Fort Creek.

1 Chandler and Taylor, "Phoenix" comb boiler and fire box size 2-½′ x 12 with 44- 2-½″ flues, 8′ long. No stack. Fitted to supply steam to pump in boiler house.

1 Fairbanks inspirator

38′ 4″ Suction pipe.

1 Boiler house, size 14′ x 22′, 10′ walls, board roof (part 1 and out)

1 Slack chute for boiler coal 1′ x 2-½′ 60′ long.

1 Coal bin at top of chute 2′ x 5′ x 20′

Mine No. 4 (Inside)

5489 Lineal feet 16# rails (Iron)

261 " " 20# " "

8124 " " 25# " "

3212 51 Room switches and frogs 16#

3 " " " " 25#

2 Diamonds, each 21 ft long.

5 Switch points 16#

1 Frog 16#

5 Plate frogs and switches and stands on slope.

15 Entry switches and frogs

10 Mining cars, small, O. K.

1 Mine car, large, door broken, 1 cap off.

1 Worthington pump #38541, size 12 x 7 x 10

1 " " #156670 " 9 x 5-¼ x 10

1 Plunger rod for pump, 38541

1 Casing for pump 38541

1 Hand saw, 1 tie fork, 1 crimper minus bar.

1 Squirt gun oiler.

1 2 room house located N.E. of Prairie Creek Depot. Not painted. 3 sash broken.

1 2 room house located S. W. of Prairie Creek Depot. 1 room board. 1 room log. Not painted. I window light broken. Kitchen needs recovering.

1 2 room shack located 675′ south of No. 4 shaft No. flue. 6′ walls, shingle roof. House in general bad order.

3213

No. 3 Camp.

House No. 101-3 room. Painted O. K.

" " 102-3 " 3 lights broken.

" " 103-3 " 4 lights broken, Floor in 2 rooms broken.

" " 104-3 room Painted O. K. 3 " "

" " 105-3 " Ditto 7 " " 1 Dbl. Sash Missing

" " 106-3 room " 1 " "

" " 107-3 " " 2 " " 1 floor broken

" " 108-4 " " 2 " "

" " 109-3 " " 1 " "

" " 110-4 " " 1 " "

" " 111-3 " " 3 " "

" " 112-4 " " 1 single sash out

" " 113-3 " "

" " 114-4 " "

" " 115-3 " " 35 lights broken 1 sash 1 knob

" " 116-4 " " 35 " " and lock gone

" " 117-4 " Old farm house, part log, in generally tumble down condition.

" " 118-3 " painted, 2 lights broken. ½ sash, 1 door panel and 2 knobs gone,

" " 119-2 " painted, 6 lights broken, 1 door broken.

" " 120-3 " Painted (partly)

" " 121-3 " not painted 3 single sash gone.

" " 122-3 " " "

" " 123-3 " " "

" " 124-3 " " "

" " 125-3 " " " 2 lights broken, 6 single sash gone.

3214

House No. 155-3 room not painted. 1 single sash broken.

" " 156-3 " " "

" " 157-3 " " "

" " 158-3 " " " 1 door panel broken.

" " 159-3 " " "

No. 4 Camp.

House No. 126-3 " painted 31 lights broken, 2 sash broken, 2 knobs gone.

" " 127-3 " " 2 lights broken, 4 sash missing.

128-3 " " 8 lights broken, 4 sash missing.

" " 129-3 " " 2 lights broken.

" " 130-4 " " 7 lights broken, 11 sash missing.

" " 131-4 " " 26 lights broken, 2 sash 1 knob missing.

" " 132-4 " " 33 " broken, 2 sash " 1 knob 1 door panel gone.

" " 133-4 " " 20 lights broken, 3 sash " 1 knob gone.

" " 134-3 " " 12 " " 6 sash missing

" " 135-3 " " 5 " "

" " 136-3 " Not " 25 " "

" " 137-3 " " 18 " " 6 " "

" " 138-3 " " 10 " " 5 " "
1 lock, 2 knobs gone.

" " 139-3 " " 2 lights broken, 1 lock, 1 knob gone

" " 140-3 room Not Painted, 25 lights broken, 1 sash gone.

" " 141-3 " " " 10 " " 6" "

" " 142-4 " " " 6 " "

" " 143-4 " " " 14 " "
(10" x 28" glass)

" " 144-2 story, 4 rooms, with one story kitchen addition having 2 small store rooms attached, This is an old farm house and is marked
3215 "#125" have 20 lights broken and in generally bad repair.

House No. 145-4 room. Painted. 4 lights broken

" " 146-3 " Not " 16 " " 2 sash missing.

" " 147-3 " " 1 " "

" " 148-3 " Not " 3 " "

" " 149-3 " Part "

" " 150-3 " Not " 1 " "

" " 151-3 " " 4 " "

" " 152-4 " Not " 3 " "

" " 153-13 " " 27 " " 2 sash missing, back Porch rotted.

(2 story boarding house)

1 wash house, 1 room, size 14' x 20', 10' walls, shingle roof, brick flue, 3 lights and 1 sash missing.

1-2 room house with small shed room attached, located immediately behind house No. 136. 6 lights and floor in shed room broken.

We, the undersigned, hereby certify that the foregoing inventory of equipment, at Mines 3 and 4 of the Cherokee Construction Co., on January first, 1907, is correct.

JAS. P. GALLAGER,
Appraiser for Cherokee Construction Co.

JAS. P. HOYE,
Appraiser for the Prairie Creek Coal Mining Co.

3216 Q. I hand you Plaintiffs Exhibit 105, and will ask what that is?

A. This is the second lease from the Cherokee Construction Company to the Prairie Creek Coal Mining Company, for the same tract of land. This is land that No. 3 and 4 mines are located on, being 687 acres.

Mr. Drinker: I offer that in evidence, Exhibit 105.

(Exhibit 105, so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 105.

"New Lease Between Cherokee Construction Company and Prairie Creek Coal Mining Company

This Agreement made and entered into as of date July 1st, 1909 between the Cherokee Construction Company, a corporation created under the Laws of the Territory of Oklahoma (now State) hereinafter designated "Lessor" of the first part, and the Prairie Creek Coal Mining Company, a corporation created under the Laws of the State of Arkansas, hereinafter designated Lessee" of the second part.

That Whereas, the Lessor is the owner of the following described coal lands situated in Sebastian County, State of Arkansas, to-wit:

Lots one (1), two (2), nine (9), eleven (11) and twelve (12), Section one (1); Lot seven (7) and the Northeast diagonal halves of Lots eight (8) and fourteen (14), Section two (2); all of Lot ten (10) except the North two hundred and eighty yards (280) thereof and that part of said lot West of the Midland Valley Railroad right of way, in Section one (1) all in Township four (4) North, Range thirty-two
3217 (32) West; and three (3) acres, more or less, out of the West side of Lot two (2), Section (6), Township four (4) North, Range Thirty-one (31) West, being all of said lot West of James Fork Creek; being three hundred and

forty-eight hundredthes (348.48) acres, more or less, which the Lessor owns in fee simple;

The North two hundred and eighty (280) yards of lot ten (10), Section one (1), Township four (4) North, Range thirty-two (32) West, and that part of said lot West of the Midland Valley Railroad right of way, being twenty-five and one-tenth (25.1) acres, more or less, in which the Lessor owns the mineral right;

Lots three (3), four, (4) Five (5), six (6), seven (7), eight (8), thirteen (13) and fourteen (14), Section one (1), Township four (4) North, Range thirty-two (32) West, being three hundred and thirteen and twenty-six hundredths (313.36) acres, more or less, which the Lessor holds under a coal lease for a term of twenty years from May 31, 1900; on which lands are situated Mines Nos. 3 and 4 of the Lessor; and

Whereas The Lessee desires to lease said coal lands, together with all buildings and machinery situated thereon or therein, including miners' houses, warehouses and all other buildings and improvements thereunto appurtenant;

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

1. The Lessor, for and in consideration of the rents, royalties, covenants and agreements herein mentioned and specified on the part of the Lessee to be paid and performed, has leased, demised and let, and does hereby lease, de-
3218 mise and let unto the said Lessee all of the property above described and all of the rights and privileges of the Lessor in and to all of said property for the term of thirty (30) years from July 1st, 1909, except as to that portion of the land above described which the Lessor holds under lease expiring May 31st, 1920, together with certain miners' houses and warehouses situated on said land and upon the South half of the South half of Section thirty-one (31) and the South half of the South half of Section thirty-two (32), Township five (5) North, Range thirty-one (31) West, including the right to use said miners' houses and warehouses in connection with the mining of coal on said leased premises for the period of this agreement, a schedule and inventory of all of the mine equipment and other property covered by this lease, which is to be returned by the Lessee upon the termination of this lease, which inventory is dated January 11, 1907, and is attached hereto and marked "Exhibit A" and made a part hereof. Provided,

that the Lessor reserves the right to remove said miners' houses and other buildings from the land in said Sections thirty-one (31) and thirty-two (32) at any time when it may desire to mine the coal on or under said land, and to move the same to some other convenient place upon the land hereby leased.

2. As a consideration for the said lease, the said Leases hereby covenants and agrees to pay to the said Lessor a rent or royalty equal to seventeen and one half cents (17-½) per ton on each and every ton of two thousand (2000) pounds of coal mined or dug from any of the demised premises; Provided, that the said rent or royalty shall amount to not less during any one year than the minimum prescribed hereinafter for said period. Said minimum royalty shall be
3219 based upon an annual minimum production of fifty five thousand (55,000) tons at seventeen and one half cents (17-½¢) per ton.

The minimum royalty for the year commencing July 1st, 1909, and for each and every year thereafter during the period of this lease, shall be Nine thousand six hundred and twenty-five dollars ($9,625.) payable in quarterly payments in advance, each quarterly payment being Two thousand four hundred and six and 25/100 dollars ($2,406.25). The first payment to be made July 1st, 1909, and the other payments shall be due on the First day of each quarter thereafter, and shall be payable not later than ten (10) days from the beginning of each quarter. The obligation, however, to produce this minimum tonnage shall be subject to abatement in case there is a general strike in the district where said mines are situated, the abatement from said cause to be apportioned according to the length of said strike.

The Lessee also agrees to pay to the Lessor seventeen and one-half cents (17½c) per ton of two thousand (2000) pounds on all coal mined or dug from the demised premises in excess of said fifty-five thousand (55,000) tons during each and every year for the period of this lease. The amount of royalty on such excess production for any one year during the period of this lease, at the rate of seventeen and one-half cents (17½) per ton shall be due on the First of the second quarter of the next succeeding year, and shall be payable by the Lessee to the Lessor within ten (10) days after the first of such quarter; Provided, That the last payment of royalty for such excess production, if any, shall be made within three (3) months after the rhitry (30 year period of this lease. Should the

amount of coal mined in any one year not amount to the
3220 minimum tonnage of fifty-five (55,000) tons herein provided for, it is agreed that the Lessee shall have the privilege of mining, free of royalty during the next succeeding year, such excess of said fifty-five thousand (55,000) tons as will make up the deficiency for the previous year, it being the intent of the party to this lease that the royalty on the minimum tonnage provided for shall be paid quarterly in advance at the beginning of each and every quarter of each and every year during the life of this lease, and that the settlement for deficiency or excess tonnage under or over the minimum tonnage shall be made the subject of a separate and distinct settlement.

It is further agreed by and between the parties hereto that the total production by the Lessee from the demised premises during the first ten (10) years of this lease shall not be less than the total production from Mine No. 1 of the Mammoth Vein Coal Company of Sebastian County, Arkansas, during the same period, and that if the production from the said Mammoth Vein Coal Company's Mine No. 1 shall for any one year during said ten (10) years exceed the production from the premises hereby demised, then and in that case the Lessor shall give the Lessee notice of such excess production, and if at the end of the next succeeding year there shall still be an excess production by said Mine No. 1 over that from the demised premises, counting from the date of this lease, the Lessee shall pay to the Lessor Seventeen and one-half cents (17½c) per ton upon one-half of such excess production, provided that if at the end of the next succeeding year, after such payment the total production from the demised premises shall equal or exceed the production from said Mine No. 1 counting from the date of this lease, then the Lessor shall give the Lessee credit for such payment on the next accruing royal-
3221 ties.

3. The Lessee covenants and agrees that the mines on said lands shall be worked continuously so far as the general demand for coal warrants; that is to say that they shall be worked the same as other average mines controlled by the Lessee or by other operators on the line of the Midland Valley Railroad.

4. The Lessee agrees at the termination of this lease or agreement to return the plant and property pertaining to said mines and leased premises to the Lessor in as good condition as when received, reasonable wear and tear excepted.

5. The Lessee shall have the use of all machinery, material and equipment of all kind now on and in said mines, but shall maintain and renew the same at its own cost and expense, and shall at its own cost and expense provide all new machinery and equipment of all kinds and character, and shall bear the whole cost and expense of developing and operating said mines during the life of this lease, as herein provided, and all new machinery, pit cars steel rails or other equipment paid for and installed by the Lessee shall be its property, and at the expiration of this lease the Lessee shall have the right to remove the same within a reasonable time thereafter.

6. The Lessee is hereby given the privilege of abandoning said Mine No. 3 so far as hoisting coal through the present slope is concerned whenever the workings are connected with those of Mine No. 4, so that the coal mined in said mine No. 3 can be hoisted through Mine No. 4 shaft, provided the Lessee shall make proper provision to prevent water from said Mine No. 3 coming into the workings of Mine No. 4, provided, the Lessee shall have the right to handle the water of Mine No. 3 through Mine No. 4; and in such case whatever ma-
3222 chinery or property connected with Mine No. 3 which cannot be utilized by the Lessee in the operation of said mines shall be delivered back to the possession of the Lessor for whatever disposition it may desire to make of the same.

7. The Lessor agrees to keep all insurable property in connection with said mines insured, at the cost, however, of the Lessee, and the Lessee agrees that the Lessor may make bills upon it for such insurance, which the Lessee agrees to promptly pay; and in case of fire the Lessor agrees to collect the loss from the insurance company or companies, and to pay the same to the Lessee, all of which sums, however, shall be used by the Lessee to replace the property burned or destroyed by such fire.

8. The said Lessee hereby retains and reserves the right, and the Lessee hereby covenants that the said Lessor shall have the right by its officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface and to inspect, examine and make surveys thereof and the said Lessee doth covenants and agree to accurately survey, not less frequently than one in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred feet to one inch, and to furnish the Lessor, not less frequently than once in every six (6) months, with an accurate copy of said map.

9. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among others, the Lessee hereby expressly agrees
3223 to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised, and [afor] the purpose of assuring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and plane until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or plane and that portion of the boundry of the demised premises towards which any of the said entries, gangways, air courses, slopes, shafts or plane may be directed is mined out as fully as it can be mined out by any first class mining methods, or until the Lessor gives its consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises, and that the Lessee shall maintain pillars in the mine or mines of dimensions fully suffient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

The Lessee shall maintain all buildings and machinery, and other appurtenances to the mines, in good condition and working order, and the Lessee further covenants that it will not do or permit, or suffer to be done, any damage or injury to the said premises, property and appurtenances.

3224 The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said premises free from water and from dangerous gases.

10. The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the Lessor against the violation of said laws by said Lessee.

11. As a part of the consideration of this lease the Lessee hereby covenants and agrees to assume all liability in the operation of said mines and hereby agrees to protect and save

harmless the said Lessor from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mines and to assume all the legal liability of an independent contractor or operator.

12. The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or demise the said premises or any part thereof, to any person or persons or corporation whatsoever, without the written consent of the said Lessor, under its seal, first had and obtained; but said Lessee may erect necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee and may also sub-let any of the buildings covered by this lease.

13. And the said Lessor, if it so elects, shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that the said
3225 Lessor may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and should any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said Lessor or the said Lessee, then such dispute shall be settled by testing said scales by Government weights.

The said Lessee further covenants and agrees to furnish within ten (10) days from the last day of every calendar month at the office of the Lessor on the form furnished by the Lessor for that purpose, a report properly authenticated, showing the coal mined or dug and used or removed from the said mines during the preceding calendar month; and if any coal shall have been taken from the said premises and wasted, or left as slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall be ascertained, and account rendered for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account and correct records of the mining and shipping of coal and coke, and that said book or books and records shall be open to the inspection of said Lessor and their agents or attorneys, for the purpose of comparing and verifying the accounts rendered.

14. The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon and upon the coal mined or coke manufactured during the continuance of this lease, after the First day of July, 1909.

15. Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operations,
3226 and any other matter herein specifically referred to arbitration, or any question arising under this lease or as to the construction thereof, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen as provided in this paragraph; or should any dispute or disagreement arise between the parties hereto touching any matter or thing to be done and performed by either party hereunder, the same shall be determined by arbitration in the following manner: The party alleging such non-performance or breach by the other or desiring any question hereunder submited to arbitration shall give ten (10) days' notice in writing to the other party of the appointment of an arbitrator to act hereunder, and thereupon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failure to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

16. The said Lessee hereby covenants and agrees to ship all coal and coke mined from or made upon the demised premises to or towards its market, or destination by the Midland
3227 Valley Railroad, and such connecting line or lines as the Midland Valley Railroad Company shall prefer and select for this purpose, and to more fully affectuate this, the said Lessee does hereby grant to the said Lessor, and to its successors and assigns, the right to consign or route all coal and coke so mined and made and delivered to said Midland Valley Railroad Company for shipment by said Lessee by whatever line or lines of railroad the said Railroad Company, or its successors or assigns, may prefer or select; Provided always, that the said Lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time or any other equally available route; Provided further, that the initial carrier for all such coal and coke

shall be said Midland Valley Railroad Company, or its successors or assigns, and the said Lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided, it will pay to said Midland Valley Railroad Company, its successors or assigns, as liquidated damages for a breach of contract, the sum of Twenty-five (25) cents in the case of coal and Forty (40) cents in the case of coke.

17. The Lessor agrees to furnish the Lessee railroad cars at the tipple of the Lessee in sufficient numbers so that the said Lessee shall be able to operate its mines not fewer hours per month than Ninety (90) per cent of the hours per month the mines are operated or any other person, firm or corporation on the Midland Valley Railroad in Sebastian County, Arkansas, including the mines, if any, of the Lessor. Cars of foreign roads shall be held to apply as well as cars of the Midland Valley Railroad, its successors or assigns.

18. It is further covenanted and agreed by and be-
3228 tween the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at its option, after sixty (60) days' notice to the Lessee, have the right to re-enter upon the demised premises in as full and complete possession as if the term of this lease were fully performed and ended by limitation; and that in such case the Lessee shall restore to the Lessor said property in as good condition as it was on the date of this contract, ordinary wear and tear excepted, and shall forfeit to the Lessor, as liquidated damages, whatever machinery, property or improvements have been placed upon said land by the Lessee in the nature of permanent fixtures or that would, under the law, become part of the realty.

19. All of the covenants and agreements, terms and conditions of this lease and contract shall inure to the benefit of, and be binding upon the successors and assigns of the Lessor, and the successors and assigns of the Lessee and each of them.

20. It is agreed by and between the parties hereto that upon the execution and delivery of this agreement, the lease between the said parties covering the same property, of date December 19, 1906, shall be terminated and ended, and thereafter have no further force and effect.

In Witness Whereof, the Lessor and Lessee have caused this instrument to be executed by their proper officers, thereunto duly authorized and attested by their corporate seals, under authority of their respective Board of Directors, this the day and year first above written.

CHEROKEE CONSRTUCTION COMPANY,
3229 By (signed) C. E. Ingersoll,
(Seal) Vice-President.

Attest:
H. E. Yarnell, Secretary.

(Seal) PRAIRIE CREEK COAL MINING COMPANY
by (Signed) F. Bache,

Attest:
Ransom Gulley, Jr., Secretary.

Commonwealth of Pennsylvania,
County of Philadelphia—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public, duly commissioned and acting, within and for the said County of Philadelphia, C. E. Ingersoll, Vice President and H. E. Yarnell Secretary, of the Cherokee Construction Company, a corporation, to me personally well known to be such Vice President and Secretary, and acknowledged that they had executed the foregoing instrument as such Vice President and Secretary, for and on behalf of said corporation, as its and their free and voluntary act and deed, for the purposes and consideration therein mentioned and set forth.

Witness my hand and notarial seal, this first day of July, 1909.

(Signed) OSCAR H. PRICE,
(Seal) Notary Public.

My Commission expires: February 2, 1910.

State of Arkansas,
County of Sebastian—ss.

3230 Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, F. Bache, and Ransom Gulley Jr., to me personally well known to be the President and Secretary respectively, of the Prairie

Creek Coal Mining Company, a corporation, and acknowledged that they had executed the foregoing instrument as such President and Secretary for and on behalf of the said corporation, as its and their free and voluntary act and deed, for the purposes and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 28 day of July, 1909.

(Signed) C. H. FINLEY,
(Seal) N. P.

My Commission expires May 16, 1910.

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District

I, Claude Hoffman, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 23 day of August A. D. 1909, at 9 o'clock a. m. and the same is now duly recorded with the acknowledgments and certificates thereon. "Record Book 38" page 598.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 23 day of August, A. D. 1909.

(Signed) CLAUDE HOFFMAN,
Circuit Clerk and Ex-Officio Recorder.
3231 By (Signed) W. C. Davis, D. C."

Q. I hand you paper marked Plaintiffs Exhibit 129, and will ask you what that is.

A. This is a lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company for 13 tons of steel rails.

Mr. Drinker: I offer that in evidence, Plaintiffs Exhibit 129.

(Exhibit 129, so offered in evidence is in words and figures as follows, to-wit:)

3232 Exhibit 129

Contract

Made and entered into this 1st day of December, 1911, by and between the Kali-Inla Coal Company, party of the first

part and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth: That for and in consideration of $8.75 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

13¼ tons steel rails located at Mine #4.

This property while in possession of the party of the second part shall be at all times insured against loss of fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, these steel rails shall be returned to the party of the first part by the party of he second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from their present location at No. 4 mine and they shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be accigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of his property shall remain with the party of the first part.

In case the party of the second part ceases to use the
3233 property or machinery for a period of four consecutive months the part of the first part at its option, may cancel this lease. And on cancellation of this lease, the party of the second part, shall at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 1st day of December, 1911.

KALI-INLA COAL COMPANY,
By C. H. Finley, Sec'y.

PRAIRIE CREEK COAL MINING CO.
By H. Denman, Vice-Pres.

Q. I hand you Plaintiffs Exhibit No. 130, and will ask you what that is?

A. This is a lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company for one lead lined pump, bought of Crawford & McCrimmon Company.

Mr. Drinker: I offer that in evidence, Plaintiffs Exhibit 130.

(Exhibit 130, so offered in evidence is in words and figures following, towit:)

3234 Exhibit 130

Contract.

Made and entered into this 31st day of July, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth: That for and in consideration of $8.78 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Lead Lined Pump bought of Crawford & McCrimmon Company during the month of July, 1911, $625.00 plus freight $77.28.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this pump shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than

three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of his property shall remain with the party of the first part.

In case the party of the second part ceases to use this
3235 property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 31st day of July, 1911.

KALI-INLA COAL COMPANY,
By H. D. Denman.

PRAIRIE CREEK COAL
MINING CO.
By F. Bache, Pres.

Q. I hand you paper marked Plaintiffs Exhibit 131, and will ask you what that is.

A. That is a lease from the Kali-Inla Company to the Prairie Creek Coal Mining Company for one pipe machine.

Mr. Drinker: I offer Plaintiffs Exhibit 131 in evidence.

(Exhibit 131, so offered in evidence is in words and figures following to-wit:)

3236 Exhibit 131

Contract.

Made and entered into this 1st day of February 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $4.80 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Pipe Machine.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this pipe machine shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 4 Mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecu-
3237 five months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 31st day of February 1913.

KALI-INLA COAL COMPANY,
By H. Denman. V. Pres.

PRAIRIE CREEK COAL MINING CO.
By

Q. I hand you paper marked Plaintiffs Exhibit 132, and will ask you what that is?

A. Lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company for one vertical boiler, about 25-horse power.

Mr. Drinker: I offer Plaintiffs Exhibit 132 in evidence.

(Exhibit 132, so offered in evidence is in words and figures following, to-wit:)

3238 Exhibit 132

Contract.

Made and entered into this 31st day of May, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:

That for and in consideration of $2.50 a month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One vertical boiler of about 25 horse power bought of Quinley & Peal., for $200.00

This property while in possession of the party of the second part shall be at all times insured against loss by fire

and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the balue of the machinery.

At the expiration of this lease, this boiler shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this
3239 property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay above mentioned rental, the pary of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 31st day of May, 1911.

KALI-INLA COAL COMPANY,
By H. Denman, Secy and Treas.

PRAIRIE CREEK COAL
MINING CO.
By F. Bache, Pres.

Q. I hand you Plaintiffs Exhibt 133, and will ask you what that is?

A. Exhibit 133 is a lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company for one wooden tank.

Mr. Drinker: I offer Exhibit 133 in evidence.

(Exhibit 133 so offered in evidence is in words and figures following to-wit:)

3240 Exhibit 133

Contract

Made and entered into this 1st day of December 1912, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $3.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the days of this lease the following described property:

One wooden tank.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the property.

At the expiration of this lease, this wooden tank shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 4 Mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecu-
3241 tive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay

the above mentioned rental, the party of the first part may. at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 1st day of December 1912.

KALI-INLA COAL COMPANY,
By H. Denman, V. Pres.

PRAIRIE CREEK COAL
MINING CO.
By

Q. I hand you a paper marked Plaintiffs Exhibit 134, and will ask you what that is.

A. This Exhibit is a lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company for one Sullivan Mining Machine.

Mr. Drinker: I offer exhibit 134 in evidence.

(Exhibit 134, so offered in evidence is in words and figures following to-wit:)

3242 Exhibit 134

Contract

Made and entered into this 1st day of February 1914, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $25.33 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One Sullivan A. C. Right Hand Electric Chain Machine complete with regular equipment, brought from the Sullivan Machinery Company in November 1913 for $1900.00.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this machine shall be returned to the party of the first part by the party of the second party to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 4 Mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of the toor by any other individual or corporation without, the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

3243 In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at this option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of thr first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 1st day of February, 1914.

KALI-INLA COAL COMPANY,
By (Signed) C. H. Finley, Vice Pres.
PRAIRIE CREEK COAL MINING CO.
By (Signed) F. Bache. Pres.

Q. I hand you a paper marke Plaintiffs Exhibit 135, and will ask you what that is.

A. This is a lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company, for one standard vertical type T gasoline engine and friction clutch coupling.

Mr. Drinker: I offer Exhibit 135 in evidence.

(Exhibit 135, so offered in evidence is in words and figures following to-wit:)

3244 Exhibit 135

Contract

Made and entered into this 31st day of August, 1911, by and between the Kali-Inla Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $5.35 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

#105490 - 6 H. P. Standard vertical 1 B Type "T" Gasoline engine with friction clutch coupling to connect 3 x 4 duplex plain fitted power pump outfit #440, $387.00, freight, $39.01.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first prat for the full value of the machinery.

At the expiration of this lease, this gasoline engine shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

3245 In case the party of the second part ceases to use this property or machinery for a period of four consecutive

months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 31st of August, 1911,

KALI-INLA COAL COMPANY,
By (Signed) H. Denman
PRAIRIE CREEK COAL
MINING CO.
By (Signed F. Bache, Pres.

3246 Q. I hand you Plaintiffs Exhibit 136 and will ask you what that is.

A. This is a lease from the Kali-Inla Coal Company to the Praire Creek Coal Mining Company, for one shaking screen.

Mr. Drinker: I offer Exhibit 136 in evidence.

(Exhibit 136, so offered in evidence is in words and figures following to-wit:)

Exhibit No. 136.

"Contract

Made and entered into this first day of January, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $19.85 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One shaker screen bought from the United Iron Works Company for $1500.00, freight $88.80.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of first part for the full value of the machinery.

At the expiration of this lease, this shaker screen shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the second part to such a place as shall be
3247 designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel thise lease, And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 1st day of January, 1911.

KALI-INLA COAL COMPANY,
By (Signed) H. Denman,

PRAIRIE CREEK COAL MINING CO.,
By (Signed) F. Bache."

Q. I hand you Plaintiffs Exhibit 137, and will ask you
3248 what that is?

A. Exhibit 137 is a lease from Mammoth Vein Coal Company to the Prairie Creek Coal Mining Company, of one 72 x 18 foot return tubular boiler.

Mr. Drinker: Plaintiffs Exhibit 138, is the assigning of that lease by the lessor to the Kali-Inla Coal Company?

A. This exhibit is an assignment from the Mammoth Vein Coal Company to the Kali-Inla Coal Company of its interest in the contract just exhibited.

Q. Being exhibit 137? A. Yes, sir.

Mr. Drinker: I offer Plaintiffs Exhibits 137 and 138.

(Exhibits 137 and 138, so offered in evidence are in words and figures following, to-wit:)

Exhibit No. 137

"Contract

Made and entered into this 27th day of March, 1911, by and between the Mammoth Vein Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of $18.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 72" x 18' return tube boiler recently purchased from the Erie Boiler Works and placed at #4 shart in Sec.
3249 1 T 4 N R 32 West in Sebastian County, Arkansas.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this boiler and fittings shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let or loaned or be made us of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease peri-
3250 od at the option of the party of the first part.

Witness: Our hands and seals this 27th day of March, 1911.

MAMMOTH VEIN COAL COMPANY,
By (Signed) H. Denman, Treas.

PRAIRIE CREEK COAL
MINING COMPANY,
By (Signed) C. H. Finley, Acting Auditor.

Exhibit No. 138.

Assignment of Contract.

For and in consideration of payment of $1.00, the receipt whereof is hereby acknowledged, and other valuable considerations, the Mammoth Vein Coal Company hereby assigned to the Kali-Inla Coal Company all its interest in the contract between the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company dated March 27th, 1911, covering lease of one 72" x 18' return tubular boiler located at #4 shaft in Sec. 1, twp. 4, N. Range 32 West, Sebastian County, Arkansas.

MAMMOTH VEIN COAL CO.
By (Signed) H. Denman.

KALI-INLA COAL COMPANY,
By (Signed) C. H. Finley, Auditor.

August 2, 1911."

Q. I now hand you papers marked Plaintiffs Exhibits 139 and 140, and will ask you what they are.

A. Exhibit 139 is a lease from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company for one 18 x 36 double cylinder first motion hoisting engine; and 140 is a supplemental contract of March 27, 1911, from the Kali Inla Coal Company to the Prairie Creek Coal Mining Company.

3251 Q. Supplemental to the same contract you just spoke of?

A. This is an addition to it. It adds to this contract, Exhibit 40 is a supplemental contract adding to the lease one pipe line,—

Q. When you said 40—you meant 140, did you?

A. I meant 140.

Mr. Drinker: I offer Plaintiffs Exhibits 139 and 140 in evidence.

(Exhibits 139 and 140, so offered in evidence are in words and figures following, to-wit:)

3252 Exhibit 139

Contract

Made and entered into this 27th day of March, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of $15.00 per month payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period till March 1, 1921, the following described machinery;

One 18 x 36 double cylinder first motion Crawford and McCrimmon hoisting engine, now placed at the slope at #4 mine,

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease the machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at his option, may cancel this
3253 lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 27th day of March, 1911.

KALI-INLA COAL COMPANY,
By (Signed) H. Denman, Treas.

PRAIRIE CREEK COAL MINING CO.,
By (Signed) C. H. Finley,
Acting Auditor.

Exhibit 140

Supplement to Contract made and entered into on the 27th day of March, 1911, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part: Witnesseth:

That for and in consideration of the payment mentioned in the above named contract, the following property is added to and made a part of the property leased in the above named contract: 1 pipe line from boiler house at Mine #4 to slope engine located at Goo Goo Eye.

This property shall be governed by the same terms as the other property covered by the aforesaid contract.

3254 Witness our hands and seals this 15th day of April, 1911.

KALI-INLA COAL COMPANY,
(Signed) H. Denman, Treas.

PRAIRIE CREEK COAL
MINING COMPANY,
(Signed) C. H. Finley, Acting Auditor.

3255 Q. I hand you papers marked Plaintiffs Exhibit 141, 142, 143, 144, 145, 146, 147 and 148 and will ask you to look at them and state whether or not they are all contracts between the same parites and between whom they are.

A. They are all contracts from the Kali-Inla Coal Company to the Prairie Creek Coal Mining Company.

Q. Now, beginning with 141, through to 148, describe respectively what the subject matter of each is, very briefly.

A. The subject matter of 141 is a lease of three and thirteen-hundredths tons of steel rail; the subject matter of exhibit 142 is one elevator, the lease of one elevator; Exhibit 143 is a lease of two electric pumps, with copper wire circuit breakers and motors; Exhibit 144 is a lease for the wire for the installing of the mining machine; Exhibit 145 is a lease of a one Palmer force draft slack burner, including grates and appurtenances; Exhibit 146 is a lease of twenty-four tons of steel rails; Exhibit 147 is a lease for one twenty-five horse power General Electric Motor; Exhibit 148 is a lease of one sheave wheel.

Mr. Drinker: I offer these exhibits, 141 to 148, both inclusive, in evidence.

(Exhibits 141, 142, 143, 144, 145, 146, 147 and 148, so offered in evidence and are in words and figures following, to-wit:)

Exhibit No. 141.

"Contract

Made and entered into this 28th day of February, 1914, by and between the Kali- Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

3256 Witnesseth:

That for and in consideration of the sum of 2.65 Dollars per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second

part, for a period of five years from the date of this lease, the following material:

Three and 13/100 tons of steel rails, valued at $128.54.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sublet loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its cost, return the machinery to the
3257 party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 28th day of February, 1914.

KALI-INLA COAL COMPANY,
By C. H. Finley,
Auditor.

PRAIRIE CREEK COAL MINING CO.
By F. Bache,
Pres.

Exhibit No. 142.

Contract

Made and entered into this 30th day of November, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth:

That for and in consideration of the sum of 0.30 Dollars per month payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of Five years from the date of this lease the following described machinery:

One Elevator, bout of L. Feenberg & Company, Ft. Smith, Ark., valued at $20.00.

3258 This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first party by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

3259 Witness:

Our hands and seals this 30th day of November, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley,
Auditor.
PRAIRIE CREEK COAL MINING CO.
By F. Bache, Pres.

Exhibit No. 143.

Contract

Made and entered into this 30th day of September, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth:

That for and in consideration of the sum of 24.54 Dollars per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following property:

Two electric Pumps, manufactured by the Deane Steam Pump Company, valued at $1066.78; 2525 Lbs. of copper wire valued at $471.48; wire and fuses $32.92; circuit breaker and switches $64.88.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part
3260 to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in a good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 30th day of September 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL MINING CO.
By F. Bache, Pres.

3261 Exhibit No. 144

Contract

Made and entered into this 31st day of January, 1914, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth:

That for and in consideration of the sum of 3.31 Dollars per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

Wire for installing Mining Machine, valued at $220.37.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the firwt part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

3262 In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness:

Our hands and seals this 31st day of January, 1914.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL MINING CO.
By F. Bache, Pres.

Exhibit No. 145.

Contract

Made and entered into this 31st day of March, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part,

Witnesseth:

Tha for and in consideration of the sum of $7.50 per month, payable at the end of each month, the party of the first part, for a period of five years from the date of this
3263 lease, does hereby lease to the party of the second part the following described machinery:

One Palmer Forced Draft Slack Burner, outfit including engine, fan, grates and appurtenances, valued at Five Hundred ($500.00) Dollars.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made uss or to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mention-
3264 ed rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to

the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 31st day of March, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL MINING CO.,
By F. Bache, Pres.

Exhibit No. 146.

Contract.

Made and entered into this 30th day of November, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of $14.88 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

Twenty-four tons of steel rails, valued at $723.26.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire
.3265 and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease, and on cancellation of this lease, the party of the second part shall at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 30th day of November, 1913.

3266 KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

PRAIRIE CREEK COAL MINING CO.,
By F. Bache, Pres.

Exhibit No. 147.

Contract.

Made and entered into this 31st day of December, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of 5.85 Dollars per month, payable at the end of each month the party of the first part does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following property:

One twenty-five horse power general electric motor, valued at $390.10.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part,

in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable
3267 allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 31st day of December, 1913.

KALI-INLA COAL COMPANY,
By C. H. Finley, Auditor.

3268 PRAIRIE CREEK COAL MINING CO.,
By F. Bache, Pres.

Exhibit No. 148

Contract

Made and entered into this 30th day of September, 1913, by and between the Kali-Inla Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part, Witnesseth:

That for and in consideration of the sum of $1.18 per month, payable at the end of each month, the party of the first part

does hereby lease to the party of the second part, for a period of five years from the date of this lease, the following material:

One Sheave Wheel.

This material, while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the material.

At the expiration of this lease it shall be returned to the party of the first part by the party of the second part to such a place as shall be designaged by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual
3269 or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or material for a period of four consecutive months the party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part shall at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 30th day of September, 1913.

KALI-INLA COAL COMPANY,
By

PRAIRIE CREEK COAL MINING CO.,
By"

Q. I hand you Plaintiffs Exhibit 149, and will ask you what that is.

A. This is a lease from the Hartford Coal Company to the Prairie Creek Coal Mining Company of 43 pit cars.

Mr. Drinker: I offer Plaintiffs Exhibit 149 in evidence.

(Exhibit 149, so offered in evidence is in words and figures as follows, to-wit:)

3270 Exhibit 149.

Contract.

Made and entered into this 1st day of January 1913, by and between the Hartford Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part. Witnesseth:

That for and in consideration of $43.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described property:

43 pit cars.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party or the first part for the full value of the property.

At the expiration of this lease, these pit cars shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at #4 mine and they shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive
3271 months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease, the party of the second part shall, at its own cost, return the ma-

chinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witness: Our hands and seals this 1st day of January, 1913.

HARTFORD COAL COMPANY,
By (Signed) H. Denman, V. P.

PRAIRIE CREEK COLA MINING COMPANY,
By (Signed) F. Bache, Pt.

Q. I hand you paper marked Plaintiffs Exhibt 150, and will ask you what that is?

A. Exhibit 150 is a lease from the Mammoth Vein Coal Company to the Prairie Creek Coal Mining Company, for one 72 x 18 boiler.

Q. I hand you a paper marked Plaintiffs Exhibit 151, and will ask you what that is.

A. The first part of this exhibit is an agreement for the Prairie Creek Coal Mining Company to be responsible to the Mammoth Vein Coal Mining Company for the amount of money that may be done at any time to its employees. The second part of this exhibit is an agreement between the
Prairie Creek Coal Mining Company and the Mam-
3272 moth Vein Coal Mining Company in regard to certain operation.

Mr. Drinker: I offer in evidence Plaintiffs Exhibits 150 and 151.

(Exhibits 150 and 151, so offered in evidence, are in words and figures following to-wit:)

3273

Exhibit 150

Contract

Made and entered into 27th day of March, 1911, by and between the Mammoth Vein Coal Company, party of the first part, and the Prairie Creek Coal Mining Company, party of the second part.

Witnesseth:—

That for and in consideration of $18.00 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 72" x 18' return tube (Erie) boiler recently purchased from the Erie Boiler Works and placed at #4 shaft in Sec. 1 T 4 N-R 32 West in Sebastian, Arkansas.

This property while in possession of the party of the second part shall be at all times insured against loss by fire in case of destruction in any manner whatsoever, the party of the second part shall be liable to the party of the grst part for the value of the machinery:

At the expiration of this lease, this boiler and fittings shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location ar #4 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let loaned or be made us of or by any other individual or corporation without the written consent of the party of
3274 the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this property or machinery for a period of four consecutive months, the party of the first party, at his option, may cancel this lease. And in Cancekkation of this lease, the party of the second part shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consective months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witnesseth:

Our hands and seals this 27th day of March, 1911.

MOMMOTH VEIN COAL COMPANY,
By (Signed) H. Denman, Treas.

PRAIRIE CREEK COAL MINING COMPANY.
By (Signed) C. H. Finley,
Acting Auditor.

3275 Exhibit No 151.

"Fort Smith, Ark., July 7th, 1914.

It is agreed between the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Mining Company that in veiw of the fact that the Mammoth Vein Coal Mining Company has been under heavy expense in connection with the strike at the mines that the Prairie Creek Coal Mining Company being greatly interest in the successful outcome of the open shop policy hereby agree to be responsible to the Mammoth Vein Mining Company for the amount of money that may be due at any time by it to its employees.

PRAIRIE CREEK COAL MNG. CO.
By F. Bache.

MAMMOTH VEIN COAL MNG. CO.
By C. H. Finley, Vice Pres.

This Agreement made this twenty-third day of March, 1914, by and between the Prairie Creek Coal Mining Company, party of the first part, hereinafter designated "Coal Company?" and the Mammoth Vein Coal Company, party of the second part, hereinafter designated "Mining Company."

Witnesseth:

That, Whereas the Coal Comnpay is the lessee from the Cherokee Construction Company of a certain tract of land described as follows:

Lots 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 - 11 - 12 - 13 -14 in the N ½ Sec. 1. And Lot 7 and the North East Diagonal halves of lots 8 and 14 in the North half of Sec. 2; all in T. 4 N. Range 32 W. located in Sebastian County, Arkansas, on which are located mines known as Prairie Creek Numbers Three (3) and Four (4); and,

Whereas, the Mining Company has this day entered into a contract for the operation of an adjoining mine known as Mammoth Vein Mine No. 1; and,

Whereas, the parties hereto believe it will be mutually advantageous that the Mining Company should also operate the mine of the Coal Company herein.

Therefore, be it agreed between the parties hereto;

1st. That effective the date hereof, the Mining Company agrees to operate the mine on the land owned by the Cherokee Construction Company, lessor of the Prairie Creek Coal Mining Company at its own costs and expense.

And to deliver coal on railroad cars at the mine tipples as the Coal Company may direct from time to time and in such sizes as the Coal Company may direct from time to time at the rate of $1.30 per ton mine run coal.

2nd. The Coal Company agrees to pay for coal so delivered by the Mining Company not later than the 25th of the calendar month following that in which it is delivered on said railroad cars.

3rd. The Mining Company agrees to deliver the coal as free from slate and impurities as possible and in case of prepared sizes as free as possible from slack.

4th. The Mining Company agrees to carry on the workings of the mines in a systematic and workmanlike manner with regard to the fullest development of the property.

5th. The Mining Company agrees to carry on its operations in accord with the laws of the State of Arkansas and according to the terms of the lease from the Cherokee Construction Company to the Prairie Creek Coal Mining Company.

6th. The Mining Company shall operate the mine
3277 whenever orders are placed with it by the Coal Company.

7th. The Coal Company agrees to place orders with the Mining Company sufficient to enable it to run its mine approximately as many days per month as mines located in the same field and working under like conditions are operated.

The Mining Company in consideration of the above further agrees that it shall be liable for all accidents which may occur to its employees or others and to hold the Coal Company free of all liability on such account.

This contract is entered into for a term of ten (10) years from date hereof but may be terminated by either party on sixty (60) days notice in writing. And may be terminated at any time by the Coal Company without notice to the Mining Company in which event, however, the Coal Company shall be compelled to pay the Mining Company an amount equal to whatever profit the Mining Company might fairly be expected to have made in the ensuing sixty (60) days.

During the term of this lease or until its termination, the Mining Company shall have the use of all the property of the Coal Company located on the leased premises which are known as Prairie Creek Mine No. 4 located on the Midland Valley Railroad near Prairie Creek, Arkansas.

Witness our hands and seals this twenty-third day of March, 1914.

PRAIRIE CREEK COAL
MINING COMPANY,
By C. H. Finley, V. P.
Party of the First Part.

MAMMOTH VEIN COAL
MINING COMPANY,
By E. P. Joyner, Secy.
Party of the Second Part."

3278 Q. I hand you Plaintiffs Exhibit 152, and will ask you what that is,—you need not describe it in detail, just state what it is.

A. It is an agreement between the Sebastian County Coal & Mining Company and the Prairie Creek Coal Mining Company in regard to certain insurance.

Mr. Drinker: I offer Exhibit 152 in evidence.

(Exhibit 152, so offered in evidence, is in words and figures following, to-wit:)

Exhibit No. 152.

"This Agreement made and entered into this ..... day of August, 1913, by and between the Sebastian County Coal & Mining Company, a corporation created under the laws of the State of New Jersey, hereinafter designated Lessor, party of the first part, and the Prairie Creek Coal Mining Company, a corporation created under the laws of the State of Arkansas, hereinafter designated Lessee, party of the second part, Witnesseth:

That, Whereas, on the 19th day of December, 1906, the Lessee entered into a contract with the Cherokee Construction Company as Lessor, by which the Lessee leased from the said Lessor, the mining property described in said lease of date December 19, 1906; and

Whereas, the Said Cherokee Construction Company has sold and transferred all of the said property to the Sebastian County Coal & Mining Company and said Sebastian County Coal & Mining Company is now the owner of the said property covered by lease; and

Whereas, it was provided in said lease of December 19, 1906, that the Lessor shall keep all insurable property
3279 in connection with the said mines insured, at the cost, however, of the Lessee, and that in case of fire the Lessor agreed to collect the loss from the insurance company or companies and pay the same to the Lessee, all of which sums, however, to be used by the Lessee to restore the property burned or destroyed by such fire; and

Whereas, the following losses by fire have occurred, and the amounts stated below collected by the Lessor from the insurance companies, which sums of money are now in the possession of the Lessor, viz:

Loss, by fire on the following described property included in said lease:

Tipple and appuretenances at No. 4 Mine destroyed by fire February 24, 1913,	$4600.00
Store building at Midland destroyed by fire, December 14, 1911,	1500.00
Fan and Fan House at No. 4 Mine destroyed by fire, November 28, 1912,	1300.00
Total insurance money received	$7400.00; and

Whereas, the Lessee, in lieu of installing a new fan at No. 4 Mine, has installed at No. 4 Mine a fan owned by the Lessor which was formerely installed at Lessor's No. 3 Mine, and has built a new Fan House at No. 4 Mine; and

Whereas, the cost of installing said fan and building said fan house amounted to $500.00; and

Whereas, it is desired by the said Lessee in lieu of said property destroyed at Midland, Arkansas, December 14, 1911, and the Fan and Fan House at No. 4 Mine burned November 28, 1912, excepting as to $500.00 used by the Lessee in re-

building the Fan and Fan House installed at No. 4
3280 Mine, as hereinbefore mentioned, to apply the balance of said insurance money, viz; $6900.00 to the building of an enlarged tipple at Prairie Creek No. 4, with long shaker screen and designed for our loading tracks, at an estimated cost of $8732.00 in accordance with estimate of cost as follows: to-wit:

Concrete Foundations, for Rock Engine, Shaker Engine; and Tipple-58 cu. yds. of Concrete (inc. excavation) at $9.00	$ 522.00
Lumber in tipple, 52 M. ft. B. M. at 30.00	1560.00
Labor " " " at 16.00	832.00
Screen	1300.00
Sheaves	155.00
Scales	95.00
Weigh Pan	225.00
Rock Car	75.00
Steam Pipes	125.00
Shaker Engine	350.00
Rock Engines	200.00
Setting Machinery	400.00
Grading Rock Dump	200.00
Bolts, rods, washers, flat sheets, galv. iron, etc.	750.00
Belting	30.00
Signal Bells and appurtenances	100.00
Builders Risk	50.00
Engineering	363.00
Two Hoisting Cages	850.00
Timber Curbing at Top of Hoisting Shaft,	550.00
	$8732.00

Whereas, the Lessee desires to apply $6900.00 of said insurance money upon the cost of building said tipple and its improvements, and $500.00 to the cost of said Fan House
3281 and installing said Fan, the balance of the cost of said tipple at No. 4 Mine estimated at $1832.00, to be paid by the Lessee; and

Whereas, it is desired that as near as practicable, the portion of said improvements to be paid for by the insurance company shall belong to the Lessor, and the portion of said improvements to be paid by the Lessee shall belong to the Lessee, and that the Lessor shall have the privilege of purchasing same from the Lessee.

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit,

1. That the Lessee shall proceed to construct said improvements at No. 4 tipple above described in accordance with plane attached hereto, and that the Lessor shall apply said insurance money to the amount of $7400.00 to the payment of the same, and to the payment of cost of building Fan House and installing Fan as above described, and that the Lessee shall pay the balance of the cost of said improvements estimated to be $1832.00, and that in consideration thereof, the following portion of said improvements shall belong to and be assets of the Lessee, viz: The screen, shaker engine, builders risk and belting, and that all of the balance of said improvements in accordance with above estimate of cost, together with the Fan and Fan House above described, shall belong to and be assets of the Lessor.

2. That at the expiration of said lease, dated December 19, 1906, the Lessor herein shall have the right to purchase the portion of said improvements belonging to the Lessee at the value of said improvements at that time, to be determined by the parties hereto, and in case they cannot agree as to said value, the same to be determined by three arbitrators,
3282 one to be selected by the Lessor and one by the Lessee, and the two arbitrators thus selected to select the third arbitrator, the decision of any two of which shall be binding upon both of the parties thereto.

3. That the improvements herein provided for belonging to the Lessor shall come under and within the terms of the said lease of date December 19, 1906, and said lease shall be and remain in full force and effect and binding in all respects upon each of the parties hereto.

Witness our hands the day and year first above written.

(Seal) SEBASTIAN COUNTY COAL & MINING COMPANY,
By C. E. Ingersoll, President.

Attest:
H .E. Yarnell,
Secretary.

(Seal) PRAIRIE CREEK COAL MINING COMPANY,
By F. Bache, President.

Attest:
C. H. Finley,
Secretary."

Mr. Drinker: In connection with these exhibits, I desire to read to the jury the sixth and seventh article of Plaintiffs Exhibit 107, being the lease from the Cherokee Construction Company to the Prairie Creek Coal Mining Company of the operation of No. 4, which defendants Exhibit 15, this being the list of the property, was Exhibit A annexed.

(The paper having been heretofore set out in full, Exhibit 107, the articles referred to are not repeated.)

3283 Q. I hand you paper marked plaintiffs' Exhibit 153, and will ask you what that is?

A. This exhibit is a contract between the Mammoth Vein Coal Mining Company and the Hartford Coal Company for 20 acres adjoining the Hoffman mine.

Q. Part of what tract was that?

A. Part of the 360 acres leased to the Mammoth Vein Coal Mining Company.

Mr. Drinker: I offer plaintiffs' Exhibit 153 in evidence.

(Exhibit 153, so offered in evidence, is in the words and figures following, to-wit):

Exhibit 153.

Lease.

This Agreement, made this 22 day of June, 1914, by and between the Mammoth Vein Coal Mining Company, a corporation created under the laws of the State of West Virginia, hereinafter designated lessor and the Hartford Coal Company, a corporation created under the laws of the state of Oklahoma, hereinafter designated lessee, Witnesseth:

That Whereas, the American Smokeless Coal Company and the Midland Valley Railroad Company by lease dated July 10th, 1905, have leased to the said lessor herein, certain coal lands for mining purposes, and whereas, the said lessor is desirous of leasing a part of said lands to the said lessee, and whereas, the said lessee is desirous of entering into said lease,

Now, Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

1. The said lessor for and in consideration of the rents and royalties, covenants and agreements hereinafter men-
3284 tioned and specified on the part of the lessee to be paid and performed, have leased, demised and let and do

hereby lease, demise and let unto the said lessee from date November 1, 1914, until all the workable coal has been exhausted, provided, if said coal is exhausted within the term of the lease from the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company, dated July 10, 1905, and if said coal is exhausted before the expiration of said lease dated July 10, 1905, that this lease shall terminate at the time of the exhaustion of said coal.

2. The exclusive right to dig for, mine and remove, and dispose of the coal in, under and upon a certain tract of land situated in Sebastian County in the State of Arkansas, and more particularly described as follows:

The Southwest diagonal half of Lot Seventeen of the North half of Section Two, Township four North, Range Thirty-two West, consisting of Twenty Acres, more or less.

3. The right to cut and use from time to time, for the purpose of the said mining operations, including the construction of said buildings, roads and structures as may be necessary in the conduct of the same, timber less than twelve inches in diameter, measured four feet from the ground growing upon that portion of the above described tract of land.

4. The right to use such running water as may be found upon any of the tracts hereby leased or found upon the surface which covers any of the coal hereby leased, to the extent that the lessors have the right to use the same; provided, such use of the said water shall in no way interfere with its use on other land now owned or which may hereafter be acquired by the said lessors.

5. The said lessor hereby covenants and agrees to
3285 and with the said lessee that it shall and may, at all times hereafter during the continuance of the term hereby granted, peacefully and quietly hold, possess and enjoy the premises and exercise the rights hereby demised without let or hinderance by or from the said lessor or by or from any person or persons lawfully claiming the same or any part thereof by, from or under them.

6. The said lessor hereby retains and reserves the right, and the lessee hereby covenants that the said lessor shall have the right, by their officers, servants, agents and engineers at all times to enter into and upon the said premises, both on and below the surface, and to inspect examine and make surveys thereof; and the said lessee doth covenant and agree to accurately survey, not less frequently than once in

every six months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than one hundred feet to one inch, and to furnish the lessor not less frequently than once in six months, with an accurate copy of said map.

7. The said lessor further reserves during the continuance of this lease for itself and its assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for roads, railways, waterways and side tracks, and also such use as they and any and all of them amy desire of all tracks, roads, rilways, water ways and stide tracks constructed by the said lessee or said lessor or its assigns, upon the herein demised premises.

8. It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all coal contained therein; and to accomplish this end, among others, the lessee expressly agrees to con-
3286 duct the operations of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the premises hereby demised; and for the purpose of assuring this and to the lessor with greater certainty, the lessee agrees to maintain in good working order all entries and gang ways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gang ways, air courses, slopes, shafts or planes and that portion of the boundary of the said premises towards which any of said entries, gang ways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by first class mining methods, or until the lessor gives its consent in writing to the abandonment of the same. The lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

And it is further expressly agreed that the lessee shall conduct no stripping operations on the coal beds hereby demised

without the written consent of the lessor being first had, and that the lessee shall leave in tact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is pene-
3287 trated by the entries and air courses turned off of the slope, excepting the diagonal boundary line across the forty, at which point the lessee may work within thirty feet of said boundary.

That the lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arrange and conduct the said mining operations as to cause no interference with the use by the said lessor of the surface covering the coal hereby leased, or with land of the said lessor bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said lessor now has standing or may hereafter cause to be constructed on the surface of bounding lands.

The lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises free from water and dangerous gasses.

9. The lease hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal, and agrees to protect the lessor against the violation of said laws by said lessee.

10. As a part of the consideration of this lease, the said lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said lessor from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said lessee or its servants and employees in the operation of said mine .

In consideration of the premises and as an inducement
3288 to the said lessor to make this agreement, said lessee hereby agrees that neither said lessor, their successors and assigns or said Midland Valley Railroad Company shall be liable for or on account of any loss or damage which may at any time in any manner arise to the said lessee or its successors or assigns, by reason of fire communicated to the buildings of said lessee or its assigns, now erected or hereafter to be erected, or the content thereof, or to the property of any kind owned or stored by said lessee along such side

tracks spurs or switches, by the locomotives, trains or cars of the Midland Valley Railroad, their successors or assigns, or arising in any manner from the operation of such side tracks or switches, and to that end the said lessee and its assigns will not make any claim against the lessor, their successors or assigns or against said Railroad, for any loss, damage, charge or expense of any kind that may grow out of any fire set or communicated by the locomotives, trains or cars of the Midland Valley Railroad, upon or along said railroad, spurs, side tracks or switches.

11. The said lessee covenants that it will at the termination of this lease, deliver up and surrender to the said lessor, to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, openings, tramways, inclines, chutes, tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever, in good working order and repair; but on such termination of this lease the working tools and implements used in mining together with all machinery, miners houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said lessee shall be and remain the property of
3289 the said lessee.

But it is hereby expressly agreed that upon such termination of this lease, provided all royalties then due are paid and all other covenants and agreements of this lease are performed, the lessee shall have ninety days after the termination of said lease to remove the above described machinery and implements.

12. The said lessee further covenants and agrees that it will not at any time during the term of this lease either voluntarily or involuntarily sublet or transfer same, or any part thereof or sublet or demise the said premises thereof to any person or persons or corporation whatsoever.

13. The said lessee agrees to commence driving at once the entries turned on the east side of the slope toward part of the above described premises and continue their operation at all times when the mine is in operation during the term of this lease or until such time as said entries reach the boundary line and the coal is mined out.

14. The said lessee hereby covenants and agrees to pay to the said lessor a rent or royalty equal to nine cents per ton on each and every ton of 2000 pounds of coal mined or dug from the demised premises.

15. The minimum royalty during the year commencing November 1st, 1914, shall be One Hundred Twenty ($120.00) Dollars to be paid each month at the rate of Ten ($10.00) Dollars per month. And in addition thereto the lessee shall pay nine (9¢) per ton of 2000# on all coal mined or dug from the demised premises in excess of One Thousand Three Hundred thirty-three tons (1333) during the said year and each succeeding year thereafter, until the coal shall be exhausted when this lease is terminated.

3290 16. The said lessor, if it so elects, shall have the right to weigh all coal and coke loaded on cars, before the same are shipped, and the said lessee covenants that the said lessor may so weigh said coal and coke before shipment without let or hinderance from all the operations of the said lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are weighed either by the said lessor or the said lessee, then such dispute shall be settled by testing the scales by government weights. The said lessee further covenants and agrees to furnish within five days from the last of every calendar month at the office of the lessor in Fort Smith, Arkansas, a report properly authenticated showing the coal mined or dug and used or removed from the said mine during the preceeding calendar month, and to pay to such person or corporation as said lessor shall direct, the amount of the rent or royalty due for the preceeding month on or before the 25th of each month; and if any coal shall have been taken from the said premises and wasted or left as slack coal in the mines, and not weighed and not accounted for, the quantity of same shall be ascertained and account rendered for the same and payment made at the rate above named. And the lessee covenants that it will keep a book or books of account of the mining and shipping of coal or coke and that said book or books shall be open to the inspection of said lessor and its agents and attorneys for the purpose of comparing and verifying the accounts rendered.

17. The said lessee hereby covenants and agrees to ship all coal or coke mined from or made from the demised premises to or towards its market or destination by the Midland Valley Railroad, and such connecting line or lines as the Midland Valley Railroad shall prefer or select for this pur-
3291 pose, and to more fully effectuate this the said lessee does hereby grant to the said lessor and to its successors and assigns, the right to consign all coal or coke so mined and made and delivered to the said Midland Valley Railroad for shipment by said lessee by whatever line or lines of railroad the said Midland Valley Railroad or its successors or

assigns, may prefer or select; Provided always that the said lessee shall not by such routing be subjected to a higher freight rate on such coal or coke than prevails at the time on any other equally available route; Provided further, that the initial carrier for all such coal and coke shall be the said Midland Valley Railroad Company, or its successors or assigns, and the said lessee covenants and agrees that for every ton of coal or coke shipped otherwise than as herein provided it will pay to said lessor as liquidated damages, for a breach of contract, the sum of twenty-five (25) cents in the case of coal and forty (40) cents in the case of coke.

18. The lessee shall have the right to take out the coal mined through the entries, slopes and over the roads of the Hartford Coal Company, its successors or assigns, and for that purpose shall have the right to ingress, egress and regress at all times during the term of this lease.

19. It is further covenanted and agreed by and between the parties hereto in the event the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at their option after sixty days' notice to the lessee, have the right to re-enter upon the demised premises in as full and complete possession as if the terms of this lease were fully
3292 performed and ended by limitation.

20. In the event of such termination of this lease for a branch of contract by the Lessee, the said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said lessee has made full satisfaction to the lessor for any and all damage which they may sustain by reason of such delay or refusal to comply with the terms of this lease; and in that event none of the said properties aforesaid shall be removed from said premises until all royalties and other payments due the Lessor hereunder shall have been paid to the said Lessor; otherwise such coal, tools, machinery and property shall become the property of the said Lessor.

21. It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said lessor to distrain for rent due and in arrears under the terms of this lease.

22. It is hereby agreed that all rights vested in the said lessor by this lease shall pass to and vest in their successors

or assigns and that all covenants and agreements shall be kept and performed by the said lessee, its successors or assigns for the benefit and advantage of the lessor, their successors or assigns.

23. This agreement shall become effective November 1st, 1914.

Witness the hands and corporate seals of the parties hereto, the day and date first above written.

(Seal) MAMMOTH VEIN COAL MINING COMPANY,

Attest: By F. Bache,
By E. P. Joyner, President.
Secretary.

3293 (Seal) HARTFORD COAL COMPANY,

Attest: By F. Bache,
By E. P. Joyner, President.
Secretary.

Certificate Of Acknowledgment.

State of Arkansas
County of Sebastian—ss.

On this day personally appeared before me the undersigned, a Notary Public, within and for the County and State aforesaid, F. Bache, to me well known as the President of the Mammoth Vein Coal Mining Company, and E. P. Joyner, to me well known as the Secretary of said Mammoth Vein Coal Mining Company, and acknowledged that they had, in their official capacity, executed the foregoing instrument and affixed thereto its corporated seal, as the act and deed of said Mammoth Vein Coal Company for the consideration and purposes herein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal at the County and State aforesaid on this 20th day of June, 1914.

JAS. K. PERKINS,
Notary Public.

My Com. expires April 11, 1918.

Certificate Of Acknowledgment.

State of Arkansas
County or Sebastian—ss.

On this day personally appeared before me the undersigned, a Notary Public, within and for the County and State

aforesaid, F. Bache, to me well known as the President of the Hartford Coal Company, and E. P. Joyner, to me
3294 well known as the Secretary of said Hartford Coal Company, and acknowledged that they had, in their official capacity, executed the foregoing instrument and affixed thereto its corporate seal, as the act and deed of said Hartford Coal Company for the consideration and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal at the County and State aforesaid on this 20th day of June, 1914.

My Comm. expires April 11, 1918.

(Seal) JAS. K. PERKINS,
Notary Public.

Certificate Of Record

State of Arkansas
County of Sebastian,
Greenwood District—ss.

I, Claude Hoffman, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 24th day of June A. D. 1914, at 11 o'clock A. M., and the same is now duly recorded with the acknowledgement and certificate thereon, in Record Book 50, page 380.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 24th day of June, A. D. 1914.

(Seal) CLAUDE HOFFMAN,
Circuit Clerk and
Ex-Officio Recorder.

By Pat. L. Smith, D. C.

Q. I hand you plaintiffs' Exhibit 154, and will ask you what that is?
3295 A. This exhibit is a lease from Franklin Bache to the Hartford Coal Company for 40 acres of land adjoining the lands of the Hartford Coal Company.
Q. Part of what tract that has been referred to before?
A. It has not been referred to before, it was 40 acres leased to the Hartford Coal Company, and joined the 280 acres they owned in fee.

Mr. Drinker: I offer plaintiffs' Exhibit 154 in evidence.

(Exhibit 154, so offered in evidence, is in the words and figures following, to-wit:

Exhibit 154.

Agreement

This Agreement made this 20th day of November, 1913, by and between Franklin Bache, party of the First Part and the Hartford Coal Company, Party of the Second Part.

Witnesseth:—

That Whereas, The Bolen-Darnall Coal Company is the owner of the coal underlying lot No. 22 of Sec. 3, Twp. 4 N., Range 32 West, Sebastian County, Arkansas.

And Whereas, Franklin Bache is the owner of the coal underlying the SW¼ of SW¼, Sec. 3, Twp. 4 North, Range 32 West,

And Whereas, by a certain agreement dated Nov. 19th, 1913, copy of which is attached hereto and made a part thereof, Franklin Bache leased the coal under the tract owned by him to the Bolen-Darnall Coal Company and in the same agreement, the Bolen-Darnall Coal Company leased the coal under the property owned by it to Franklin Bache,

And Whereas, the property leased by the Bolen-Darnall Coal Company to Franklin Bache adjoins the property of the Hartford Coal Company,

3296 And Whereas, the coal under this property can be advantageously removed by the Hartford Coal Company,

Therefore, be it agreed between the said Franklin Bache and the Hartford Coal Company that the said Bache hereby assigns all his rights under said lease to the Hartford Coal Company so far as concerns lot 22, Sec. 3, Twp. 4 N. Range 32 West, and the Hartford Coal Company hereby undertakes to assume the terms of the said lease so far as it affects the said lot No. 22, and to hold the said Bache clear of any responsibility thereunder.

If at any time the Hartford Coal Company should fail to carry out the terms of this agreement or the terms of the lease between Franklin Bache and the Bolen-Darnall Coal Company which the Hartford Coal Company assumes hereby, then the rights hereby conveyed by Bache to the Hartford Coal Company shall revert to the said Bache.

The Hartford Coal Company agrees to furnish said Bache certified copy yearly or other satisfactory evidence of the payment of advance royalty and monthly of the payment of any royalty on coal actually removed from the property; and failing t do so, shall entitle the said Bache to declare this agreement void and to take possession of said property.

It shall be held in this agreement that any rights and duties of the said Bache or the Hartford Coal Company herein shall also apply to the successors or assigns of either or both said Bache and the said Hartford Coal Company.

FRANKLIN BACHE,
Party of the First Part.

HARTFORD COAL CO.
By C. H. Finley, Vice Pres.,
Party of the Second Part.

3297 State of Arkansas
County of Sebastian—ss.

On this 7th day of February 1914, before me, the undersigned, a Notary Public, within and for the County of Sebastian, State of Arkansas, duly commissioned and acting appeared in person Franklin Bache, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as such Notary Public, in the County of Sebastian, State aforesaid, on this 7th day of February 1914.

(Seal) E P JOYNER
Notary Public.

My commission expires Dec. 16th, 1915.

State of Arkansas
County of Sebastian—ss.

Be it remembered, that on this day came before me, the undersigned, a Notary Public duly commissioned and acting within and for said State and County, C. H. Finley to me personally well known to be the Vice-President of the Hartford Coal Company, a corporation, and acknowledged that he had executed the foregoing instrument as such Vice President for and on behalf of the said corporation, as its and his free

and voluntary act and deed, for the purposes and considerations therein mentioned and set forth, and I do so certify.

Witness my hand and notarial seal this 7th day of February 1914.

(Seal)

E P JOYNER
Notary Public.

My commission expires Dec 16th, 1915.

3298

Copy.

Agreement

This Agreement entered into this 19th day of November, 1913, by and between W. E. Beatty and L. S. Mohr, Receivers of the Bolen-Darnall Coal Company, parties of the first part, hereinafter referred to as the "Bolen Company", and Franklin Bache, party of the second part, hereinafter referred to as "Bache";

Witnesseth: That Whereas, said Bolen Company is the owner of the coal underlying Lot twenty-two (22), Section Three (3), Township Four (4) North Range Thirty-two (32) West, Sebastian County, Arkansas, containing forty acres more or less, and

Whereas, said Bache is the owner of the coal underlying the Southwest quarter of the Southwest quarter of Section Three (3) Township Four (4) North, Range Thirty-two (32) West, Sebastian County, Arkansas, containing forty acres more or less, and

Whereas, the Bolen Company is desirous of removing the coal from the tract owned by said Bolen Company;

Now, Therefore, Be It Agreed, that the said Bolen Company hereby leases to the said Bache the coal underlying the tract owned by the said Bolen Company, and the said Bache hereby leases to the said Bolen Company the coal underlying the tract owned by said Bache.

The following conditions of lease shall apply to each tract:

1. The lease shall terminate upon the exhaustion of the coal.

2. The rents shall be $100.00 payable annually in advance, commencing on January 1st, 1914.

3. The royalty shall be at the rate of eight cents per ton of 2,000 pounds on all coal mined and shall be payable on

the 25th day of the calendar month next succeeding that in which the coal is mined.

4. Any rents paid at the above rate of $100.00 per year shall be held as a credit on royalties which may become due in the same or succeeding years.

5. The lessee shall make a report in writing not later than the 10th day of each month to the lessor, setting forth the amount of coal removal in the preceding month.

6. The lessor shall have the right at all reasonable times to enter the property of the lessee for the purpose of examining the property leased.

7. In the event of dispute as to the amount of coal removed, it shall be ascertained by actual measurement of the portion of the property from which the coal has been exhausted.

8. The lessee shall have the right of way through the coal leased for the purpose of conducting mining operations on other lands adjoining the land leased.

9. The lessor hereby warrants good title to the property and quiet possession by the lessee from any one claiming under the lessor.

10. The lessee agrees to carry on mining operations in a workmanlike manner, having in view the greatest recovery of coal from the tract leased as may be consistent in ordinary good mining methods.

11. It is distinctly understood and agreed that the lessor shall not be liable, in damages, for any act of commission or omission of the lessee, or the agents or assigns of said lessee, in the mining of coal in and on said property, or in the operation of coal mines in and on said property.

12. In the event of failure of either party to comply with the terms of this agreement, the lease to such party shall terminate and the lessor shall have the right, on sixty days notice in writing, to enter upon the property and take possession of it.

13. In the event of any dispute arising between the parties hereto under this agreement, it shall be determined by arbitration, each party selecting one arbitrator and in the event of their being unable to agree, they to select a third. Should a decision not be reached under this arbitration clause within sixty days of the notice of one party to the oth-

er of its desire for arbitration, the matter in dispute shall be no longer subject to arbitration except by mutual consent.

In Witness Whereof we have hereunto signed this agreement this 19th day of November 1913.

BOLEN-DARNALL COAL COMPANY,
By (Signed) W. E. Beatty,
" L. S. Mohr,
Receivers.

(Signed) FRANKLIN BACHE.

State of Oklahoma,
County of Pittsburg—ss.

On this 4th day of Dec., 1913, before me, the undersigned, a Notary Public, within and for the County of Pittsburg, State of Oklahoma, duly commissioned and acting, appeared in person, W. E. Beaty, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as such Notary Public in the County of Pittsburg, State aforesaid, on the 4th day of Dec. 1913.

3301 (Signed) ALLEN R. CALDWELL,
(Seal) Notary Public.

My commission expires Aug. 16th, 1917.

State of Misscuri,
County of Jackson—ss.

On this 22nd day of November, 1913, before me, the undersigned, a Notary Public, within and for the County of Jackson, State of Missouri, duly commisisoned and acting, appeared in person, L. S. Mohr, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as such Notary Public, in the County of Jackson, State of Missouri, on the 22nd day of November, 1913.

(Signed) BERTHA L. JOHNSON,
Notary Public.

My commission expires September 13th, 1917.

State of Arkansas,
County of Sebastian—ss.

On this 19th day of November, 1913, before me, the undersigned, a Notary Public, within and for the County of Sebastian, State of Arkansas, duly commissioned and acting, appeared in person Franklin Bache, to me personally well known as the person whose name appears upon the within and foregoing instrument, as one of the parties thereto, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I hereunto set my hand as
3302 such Notary Public, in the County of Sebastian, State aforesaid, on the 19th day of November 1913.

(Signed) E. P. JOYNER
Notary Public.

My commission expires Dec. 16th, 1915.

Certificate of Record.

State of Arkansas,
County of Sebastian
Greenwood District—ss.

I, Claude Hoffman, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 23rd day of June, A. D. 1914, at 9:40 a'clock a. m., and the same is now duly recorded with the acknowledgment and certificate thereon, in Record Book 50, page 376.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 23rd day of June, A. D. 1914.

CLAUDE HOFFMAN
(Seal) Circuit Clerk and Ex-Officio Recorder.
By Pat. L. Smith, D. C.

Q. I hand you plaintiffs' Exhibit 155, and will ask you what that is?

A. This is a lease from the Denman Coal Company to the Hartford Coal Company for the Litchfield hoisting engine at the Dallas mine.

Mr. Drinker: I offer plaintiffs' Exhibit 155 in evidence.

(Exhibit 155, so offered in evidence, is in the words
3303 and figures following, to-wit):

Exhibit 155.

Contract

Made and entered into this 1st day of December 1910, by and between the Denman Coal Co., party of the first part, and the Hartford Coal Company, party of the second part.

Witnesseth: That for and in consideration of a payment of $25.00 per month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease the following described property:

One 12 x 18, Second motion Litchfield engine with cast iron drum, moved from Burma, Ark., about Dec., 1st, 1910, from near old Burma shaft, and taken to Mine No. 1 of the Cherokee Construction Co., and placed on the NW/4 of the SW/4, Section 2, T. 4 N. R. 32 W. Sebastian County Arkansas. This property being subject to mortgage of Denman Coal Company property at Midland, Ark.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part, And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be
3304 sublet, loaned, or be made use of to or by any other individual, partnership or corporation without the written consent of the party of the first part first being obtained, Neither shall the property be removed from the land where first placed without the written consent of the party of the fire part first being obtained.

In case the party of the second part ceases to use this machinery for a period of three consecutive months, the party of the first part, at his option, may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option, cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 1st day of December 1910

DENMAN COAL COMPANY,
By H Denman President

HARTFORD COAL COMPANY,
By, Ransom Gully Jr Auditor.

Mr. Drinker: Skip a number, and note that that will be a lease from the Mammoth Vein Royalty Company to the Mammoth Vein Coal Company of October 1st, 1904.

Q. I hand you a paper marked plaintiffs' Exhibit 115, and will ask you what that is?

3305 A. The first part of the exhibit is an agreement to be responsible to the Mammoth Vein Coal Mining Company.

Q. I don't want you to interpret it, just an agreement between so and so.

A. This is an agreement between Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company in regard to the payment of certain money, and the second part is between the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company in regard to the operation of coal mines.

Q. What mine? A. Mammoth Vein mine.

Q. Number what? A. One.

Mr. Drinker: I offer plaintiffs' Exhibit 115 in evidence.

(Exhibit 115, so offered in evidence, is in the words and figures following, to-wit):

143—5154

Exhibit 115.

Fort Smth, Ark., July 7th, 1914.

It is agreed between the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company that in view of the fact that the Mammoth Vein Coal Mining Company has been under heavy expense in connection with the strike at the mines that the Mammoth Vein Coal Company being greatly interest in the successful outcome of the open shop policy hereby agrees to be responsible to the Mammoth Vein Coal Mining Company for the amount of money that may be due at any time by it to its employees.

MAMMOTH VEIN COAL COMPANY
By F Bache Pr

MAMMOTH VEIN COAL MINING COMPANY
By C. H. Finley Vice Pres.

3306 This Agreement made this twenty-third day of March, 1914, at Fort Smith, Arkansas, by and between the Mammoth Vein Coal Company party of the first part, and the Mammoth Vein Coal Mining Company, party of the second part.

Witnesseth: That, Whereas, the Mammoth Vein Coal Company operates under lease from the Mammoth Vein Royalty Company a certain tract of land described as follows:

Lots 15, 16 and 21 and two (2) acres in the NW corner of lot 22. All in the North half of Sec. 2, T. 4 N. Range 32 West, Sebastian County, Arkansas, containing about thirty acres of unmined coal;

And, Whereas, the Mammoth Vein Coal Mining Company is the lessee of over three hundred and forty (340) acres of coal land described as follows adjoining the land leased by the Mammoth Vein Coal Company, to-wit:

The SW diagonal halves of lots 8 and 14 and lots 3, 10, 11, 12, 13 and the North East diagonal half of lot 17 in the north half of Sec. 2. And lots 7 and 14 in the north half of Sec. 3. All in T. 4 north, range 32 west Sebastian County, Arkansas; and,

Whereas, it is probable that the coal will be exhausted from the lands leased by the Mammoth Vein Coal Company much sooner than from the lands leased by the Mammoth Vein Coal Mining Company; and,

Whereas, all the coal from both leases is taken out through one mine; and,

Whereas, it is considered desirable that the operations of the mine should be carried on by the Company having the larger acreage of coal unmined.

Therefore, be it agreed by and between the Mammoth
3307 Vein Coal Company, party of the first part, hereinafter designated "Coal Company" and the Mammoth Vein Coal Mining Company, party of the second part, hereinafter designated "Mining Company:"

1st. That effective the date hereof, the Mining Company agrees to operate the mine on the said land owned by the Mammoth Vein Royalty Company, lessor of the Mammoth Vein Coal Company, and the land of the Mammoth Vein Coal Mining Company, lessee of the Cherokee Construction Company, at its own costs and expense.

And to deliver all coal mined by it to the Coal Company on railroad cars at the mine tipples as the Coal Company may direct from time to time and in such sizes as the Coal Company may direct from time to time at the rate of $1.30 per ton mine run coal.

2nd. The Coal Company agrees to pay for coal so delivered by the Mining Company not later than the 25th of the calendar month following that in which it is delivered on said railroad cars.

3rd. The Mining Company agrees to deliver the coal as free from slate and impurities as possible and in case of prepared sizes as free as possible from slack.

4th. The Mining Company agrees to carry on the workings of the mine in a systematic and workmanlike manner with regard to the fullest development of the property.

5th. The Mining Company agrees to carry on its operations in accord with the laws of the State of Arkansas and according to the terms of the leases from the Mammoth Vein Royalty Company to the Coal Company and from the Cherokee Construction Company to the Mining Company.

6th. The Mining Company shall operate the mine whenever orders are placed with it by the Coal Company.

3308 7th. The Coal Company agrees to place orders with the Mining Company sufficient to enable it to run its mine approximately as many days per month as mines located

in the same field and working under like conditions are operated.

The Mining Company in consideration of the above further agrees that it shall be liable for all accidents which may occur to its employees or others and to hold the Coal Company free of all liability on such account.

This contract is entered into for a term of ten (10) years from date hereof but may be terminated by either party on sixty (60) days notice in writing. And may be terminated at any time by the Coal Company without notice to the Mining Company, in which event, however, the Coal Company shall be compelled to pay the Mining Company an amount equal to whatever profit the Mining Company might fairly be expected to have made in the ensuing (6) days.

During the term of this lease or until its termination, the Mining Company shall have the use of all the property of the Coal Company located on the leased premises which are known at Mammoth Vein Mine No. 1 located on the Midland Valley Railroad and on the Rock Island Railroad near Hartford, Arkansas.

Witness our hands and seals this twenty-third day of March, 1914.

MAMMOTH VEIN COAL COMPANY,
By C. H. Finley, V. P.
Party of the Second Part.

MAMMOTH VEIN COAL
MINING COMPANY,
By E. P. Joyner, Secy.
Party of the First Part.

3309 Q. I hand you paper marked plaintiffs' Exhibit 116, and will ask you what that is?

A. This exhibit is a lease from the Kali Inla Coal Company to the Mammoth Vein Coal Company of certain machinery, which is set forth.

Mr. Drinker: I offer plaintiffs' Exhibit 116, in evidence.

(Exhibit 116, so offered in evidence, is in the words and figures following, to-wit):

Exhibit 116.

3310 Plaintiffs Exhibit 116.

3 boilers at $600.00	$1800.00
1 Hoist,	1200.00

1 Compressor,	2000.00
1 Heater,	300.00
Outside piping	300.00
Shaker	500.00
Shaker engine	200.00
120 pit cars @ $30	3600.00
16 mules at $193	3092.00
300 tons rails @ $20	6000.00
L Boiler RI tipple,	588.00
	$19580.00

Agreement.

Fort Smith, Arkansas, Feb. 14, 1914.

The Kali Inla Coal Company hereby rents to the Mammoth Vein Coal Company all the machinery, etc., set forth in the attached list at $3132.80 per annum.

This agreement to continue in effect for Twenty (20) years.

Upon the failure of the Mammoth Vein Coal Company to carry out the terms of this agreement and pay rental annually to the Kali Inla Coal Company, the Kali Inla Coal Company may, at its option, take possession of certain machinery upon thirty (30) days notice in writing to the said Mammoth Vein Coal Company.

At th expiration of the said twenty (20) years the Mammoth Vein Coal Company to have the option of extending this agreement for an additional term of ten (10) years.

3311 The Mammoth Vein Coal Company shall at all times keep said machinery in good repair, reasonable wear and tear excepted, and replace the same from time to time if any becomes worn out or destroyed.

The Mammoth Vein Coal Company shall at all times keep same machinery insured from loss by fire and their policies to show that the loss if any shall be payable to the Mammoth Vein Coal Company or the Kali Inla Coal Company as their interests may appear.

KALI INLA COAL CO,
By F. Bache, Preas.

MAMMOTH VEIN COAL CO.
By C. H. Finley, Vice Pres.

3312 Q. I hand you plaintiffs' Exhibit 117, and will ask you what that is?

A. That is a lease from the Denman Coal Company to the Mammoth Vein Coal Company for one 80 ton, 64 foot Monarch railway track scales, set on the Rock Island tracks.

Mr. Drinker: I offer plaintiffs' Exhibit 117 in evidence.

(Exhibit 117, so offered in evidence, is in the words and figures following, to-wit):

3313 Exhibit 117

Contract

Made and entered into this 5th day of December, 1911, by and between the Denman Coal Vompany, party of the first part, and the Mammoth Vein Coal Company, party of the second part, Witnesseth:

That for and in consideration of a payment of $9.00 per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease, the following described machinery:

One set 80 ton 64 foot "Monarch" railway tracks scales now set on C. R. I. & P. tracks at new C. R. I. & P. tipple of Mammoth Vein Coal Company. These scales being taken from property of Denman Coal Company at Burma, Arkansas.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned or be made us of to or by any other individual, partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed with-
3314 out the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of three consecutive months, the party of the first part at his option may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 1st day of December, 1911.

DENMAN COAL COMPANY,
By (Signed) H. Denman, President.

MAMMOTH VEIN COAL COMPANY,
By (Signed) F. Bache, Pt.

3315 Q. I hand you plaintiffs' Exhibit 118, and will ask you what it is?

A. Lease from the Denman Coal Company to the Mammoth Vein Coal Company of one Crawford engine, used at the Rock Island tipple.

Mr. Drinker: I offer Exhibit 118 in evidence.

(Exhibit 118, so offered in evidence, is in the words and figures following, to-wit):

3316 Exhibit 118.

Contract.

Made and entered into this 5th day of October, 1910, by and between the Denman Coal Co., party of the first part, and Mammoth Vein Coal Co. party of the second part, Witnesseth:

That for and in consideration of a payment of $32.00, thirty-two dollars per month, payable at the end of each month, the party of the first part does lease to the party of the second part for a period of one year from date of this lease, the following described machinery:

One 10″ x 12″ double cylinder, Crawford & McCrunmon hoisting engine, former at Bumia shaft to be used as endless

rope engine, at Rock Island, connection at Mammoth Vein mine #1, and one 48" x 16'-0 Obrien retuen tubular boiler to be used at New Rock Island tipple at M. V. #1 mine, at Prairie Creek, Arkansas, on the Midland Valley R. R. in lot 21 Section 214 N. R. 32 West. Which Was Removed From The Property Of The Denman Coal Co. at its mine number 1, located at Burma, Ark. on or about October 1st, 1910.

This property while in the possession of the party of the second part shall be at all times insured against loss by fire and in case of its destruction in any manner whatsoever, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease this machinery and material shall be returned to the party of the first part by the party of the second part to the place from which it was originally taken without any cost to the party of the first part. And it shall be returned in as good condition as when leased,
3317 reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property be sublet, loaned or be made use of to or by any of other individual, partnership or corporation without the written consent of the party of the first part being first obtained. Neither shall the property be removed from the land where first placed without the written consent of the party of the first part being obtained.

In case the party of the second part ceases to use this machinery or property for a period of 3 consecutive months, the party of the first part at his option may cancel this lease. And on cancellation of this lease the party of the second part shall, at its own cost, return the machinery to the party of the first part to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part, may at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended from year to year at the option of the party of the first part.

Witness: Our hands and seals this 5th day of October, 1916.

DENMAN COAL CO.
By (Signed) H. Denman, Pres.
MAMMOTH VEIN COAL CO.
By (Signed) Ramon Gulley.

3318 Q. I hand you Exhibit 119, and will ask you what it is?

A. Lease from the Denman Coal Company to the Mammoth Vein Coal Company of one boiler.

Mr. Drinker: I offer plaintiffs' Exhibit 119 in evidence.

(Exhibit 119, so offered in evidence, is in the words and figures followng, to-wit):

3319 Exhibit 119

Contract.

Made and entered into this 15th day of Jonuary 1914, by and between the Denman Coal Company, party of the first part, and the Mammoth Vein Coal Company, party of the second part.

Witnesseth:—

That for and in consideration of $1.75 per month, payable at the end of each month, the party of the first part does hereby lease to the party of the second part for a period of five years from the date of this lease the following described machinery:

One 50 H. P. boiler—size 36" x 18' located at Mine No. 1.

This property while in possession of the party of the second part shall be at all times insured against loss by fire and in case of destruction in any manner whatsover, the party of the second part shall be liable to the party of the first part for the full value of the machinery.

At the expiration of this lease, this boiler shall be returned to the party of the first part by the party of the second part to such a place as shall be designated by the party of the first part, in case such place shall be designated not more than three miles from its present location at No. 1 mine and it shall be returned in as good condition as when leased, reasonable allowance being made for wear and tear.

This lease shall not be assigned or the property sub-let, loaned or be made use of to or by any other individual or corporation without the written consent of the party of the first part being first obtained and the title of this property shall remain with the party of the first part.

In case the party of the second part ceases to use this boiler for a period of four consecutive months, the
3320 party of the first part, at its option, may cancel this lease. And on cancellation of this lease, the party of the second part, shall, at its own cost, return the machinery to the party of the first part, to the place from which it was originally taken, or in case the party of the second part fails for three consecutive months to pay the above mentioned rental, the party of the first part may, at its option cancel this lease and the property shall be returned to the party of the first part by the party of the second part as mentioned above.

This lease may be extended at the end of the lease period at the option of the party of the first part.

Witnesseth:—

Our hands and seals this 15th day of January, 1914.

DENMAN COAL COMPANY
By (Signed) C. H. Finley, Secy, & Treas

MAMMOTH VEIN COAL COMPANY
By

3321 Q. Mr. Denman, I hand you paper marked Plaintiffs' Exhibit 157, and will ask you whether that is one of the leases to which you referred in your testimony, executed by the Receivers to certain persons of part of the Hartford Coal Company land, if so, give the date of it, and to whom and by whom it was made?

A. This is a lease from the Receivers, C. H. Finley, and H. P. Hillard, to W. H. Miellmier, for the right to mine certain coal adjacent to Mammoth Vein mine No. 1.

Q. Is that one of the leases that you referred to in your testimony as having been made by the Receiver on property near the Hoffman mine?

A. Yes, sir, this is one of those leases; I don't think I specially referred to this lease, but this is the one of the group of leases along in that section of territory.

Mr. Drinker: I offer plaintiffs' Exhibit 157 in evidence.

Mr. Warrum: We object to that because it purports to be executed in June of this year.

Mr. Drinker: It is offered for the purpose of showing the rate of royalty in the lease, in connection with the cross-examination of this witness.

The Court: In view of the fact that the objection was made to his stating the rate of royalty in his cross-examination, the objection was made because the lease was the best evidence, and the court would not be consistent not to allow the lease to be introduced at this time.

The objection will be overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

3322 Mr. Drinker: I would just as leave he would look at the lease and state.

The Court: It will save the record that much.

Q. Will you look at this original lease and state what is the rate of royalty fixed in that lease?

Mr. Warrum: I don't remember the cross-examination, but I suppose it was on the ground it was irrelevant.

Mr. Drinker: I will withdraw the question, and offer Plaintiffs Exhibit 157 in evidence.

Mr. Warrum: We renew our objection.

The Court: It may be received, objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

(Exhibit 157, so offered in evidence, is in words and figures following to-wit:)

3323 Plaintiffs' Exhibit 157

October 19th, 1917.

Mr. W. H. Miellmier,
Hartford, Ark.

Dear Sir:

The Receivers hereby agree that beginning with October 1st, and until further notice, the rate of royalty under lease dated June 28th, 1917, between the Receivers for the Mammoth Vein Coal Company and the Mammoth Vein Royalty

Company, party of the first part, and W. H. Miellmier, party of the second part, shall be sixty-five ($.65) Cents per ton.

CLYDE H. FINLEY,
(Signed)
A. P. HILLIARD,
Receivers.

Lease Contract.

This agreement made and entered into this 28th day of June, 1917, by and between Clyde H. Finley and H. P. Hilliard, Receivers for the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, party of the first part and W. H. Miellmier, party of the second part.

Witnesseth: That for and in consideration of the covenants hereinafter mentioned to be performed by the party of the second part, the party of the first part hereby grants and lets to the party of the second part the right and
3324 privilege to dig, mine, remove and sell the coal on the following described tract of land, to-wit:

All that coal on the west side of lot No. 21 and lot No. 16; the north half (N/2) of section 2; Township 4 North; Range 32 West; which coal lies to the north and northeast of the drift now opened and operated by the said W. H. Miellmier. The said coal being only the coal lying on the west side of the slope known as Mammoth Vein No. 1 slope.

The following conditions are hereby agreed to by the parties hereto.

First: The contract shall continue in effect until January 1st, 1919, unless terminated in the manner provided for in this contract, or in the event the Receivership of the Mammonth Vein Coal Company and the Mammoth Vein Royalty Company is sooner terminated, this lease shall terminate at the same time.

Second: The minimum royalty per ton on this coal shall be Fifty cents ($.0.50) per ton. This shall apply on all coal dug, mined or removed from said premises. This includes, all grades of coal. It also includes coal used for boiler purposes or any other purposes on this premises in connection with the operation of said mine.

The royalty on coal mined from the demised premises shall be paid on a sliding scale depending on the price received by the Lessee for coal mined and sold from the demised
3325 premises. On every ton of coal from the demised premises that the Lessee sells at the rate of Two Dollars

and Twenty-five cents ($2.25) or less per ton, he shall pay the Lessor a royalty of one quarter (¼) or twenty-five per cent (25%) on selling price but said royalty per ton shall not be less than Fifty cents ($0.50). On all coal sold from the demised premises by the Lessee at a price in excess of Two Dollars and Twenty-five cents ($2.25) per ton, the Lessee shall pay the Lessor 56 ¼¢ per ton plus 50% or one-half of the amount that the selling price exceeds $2.25 per ton. For example,—in case the Lessee sells coal at $3.00 per ton, the royalty on every ton of coal sold at $3.00 per ton will be 56 ¼¢ plus one-half of 75¢, equals 37 ½¢, making a total of 93 ¾¢ per ton royalty. Two thousand (2000) pounds shall constitute a ton.

Third: The party of the second part shall not open a mine or conduct his operations in such a manner as to interfere in anyway with the operations of Mammoth Vein Mine No. 1 or the mine known as "Hoffman" or any other mine or strip pit operations now being conducted in this vicinity. The party of the first part shall be the sole judge and its decision shall be final on this question.

Fourth: The party of the second part, through its agents, shall have access to the workings of the mine at all reasonable times.

Fifth: All the work on this mine shall be conducted according to the laws of the State of Arkansas, and the party of the first part shall not be held liable, in any manner, either directly or indirectly, for accidents, injuries, debts or
3326 obligations to any employees of the party of the second part. And the party of the second part agrees to deliver the demised premises to the party of the first part, at the expiration of this lease contract, or at the termination thereof as herein provided for, free from all claims for labor.

Sixth: The party of the second part shall turn in to the party of the first part at its office in Fort Smith not later than the 5th of the month, a true record of all coal mined and removed or used on the premises during the next preceding month, and shall pay royalty on said coal not later than the 15th of the month following that in which the coal was mined. Failure to make payment of said royalty shall at the option of the party of the first part cancel this lease and the party of the first part, without liability for damages, shall have the right of taking immediate possession of all workings, improvements, tools, machinery and supplies on the demised premises, and hold same until the amount of royalty is paid in full to the party of the first part.

Seventh: As a minimum royalty on said lease, the party of the second part agrees to pay to the party of the first part, on the first day of each month, a minimum advance royalty of Thirty Dollars ($30.00) per month, which minimum advance royalty shall apply as a credit on the coal mined during the month for which the royalty was paid. Failure to pay the minimum royalty of Thirty Dollars ($30.00) per month, shall at the option of the party of the first part cancel this lease and give the party of the first part the privilege
3327 of taking immediate possession of the property without legal proceedings and without liability for damages for so doing.

Eighth: In case the party of the second part fails, for three consecutive months, to operate said mine, unless prevented by a general strike, it shall work a forfeiture of said lease and the party of the first part shall have the right to take possession of said property without legal proceedings or liability for so doing.

Ninth: This lease contract cannot be assigned or transferred, either voluntarily or involuntarily or by any process of law, without the written consent of the party of the first part to such a transfer or assignment first being obtained before such a transfer or assignment is made.

Tenth: The party of the second part hereby agrees to make a good and sufficient bond in the sum of Five hundred dollars ($50.00), to be approved by the Receivers, guaranteeing the payment of royalties and the fulfilment of the terms of this lease contract.

Eleventh: A joint inventory shall be taken of the pit cars, rails and other personal property turned over to the party of the second part by the party of the first part. Said inventory to be made a part of this contract. It is understood that the party of the first part has the right to take these pit cars, rails and other personal property, at any time it has other use for said pit cars, rails and other personal property, without liability for damages for so doing.

3328 Twelfth: The Lessee shall keep a correct set of books showing coal mined, loaded, shipped and sold, which books shall be open to the inspection of the Lessor or its duly authorized agent at all reasonable times.

Thirteenth: It is further understood that this contract shall be valid and binding only when approved by the United States Court having jurisdiction of the Receivership of the

Mammoth Vein Coal Company and the Mammoth Vein Royalty Company.

Witness our hands and seals this 10th day of Aug. 1917.

CLYDE H. FINLEY,
H. P. HILLIARD,
Receivers for Mammoth Vein Coal Co.
and
Mammoth Vein Royalty Company,
Party of the first part.

W. H. MIELLMIER,
Party of the second part.

Bond.

Whereas, the Receivers of the Mammoth Vein Coal Company and the Mammoth Vein Royalty Company, have entered into a contract with W. H. Miellmier, said contract being dated the 28th day of June, 1917, and

Whereas, Section 10 of that contract requires a bond to be made by the said W. H. Miellmier,

Now, Whereas, we, the undersigned, obligate and bind
3329 ourselves to Clyde H. Finley and H. P. Hilliard, Receivers, in the sum of Five Hundred Dollars ($500.00) to be void upon condition that the said W. H. Miellmier shall duly perform all of the provisions of said contract; otherwise to remain in full force and effect.

W. H. MIELLMIER,
O. A. BROOK
W. E. WEST.

3330 Q. I hand you Plaintiffs Exhibits 110 and 111, and will ask you what they are; just state who they are between and what is the date of them.

A. Exhibit 110 is an assignment of the Boone lease to Joseph M. Spradling by the American Smokeless Coal Company, dated the 13th day of January, 1903,—no, let's see. This date, I made a mistake on that date. The date is so obliterated I cannot make it out.

Q. What is the other one?

A. Exhibit 111 is a deed or lease signed by the Cherokee Construction Company by C. E. Ingersol, President, and it is dated the 30th day of October, 1905.

Mr. Drinker: I offer these papers, Plaintiffs Exhibits 110 and 111 in evidence.

(Exhibits 110 and 111, so offered in evidence, are in words and figures following, to-wit:)

3331 Plaintiffs' Exhibit 110.

Assignment of Boone Lease to Jos. M. Spradling.

Whereas, on the 13th day of January, 1903, T. W. M. Boone and Ella Boone, his wife, leased to the Prairie Creek Coal Company, its successors and assigns, the following described real estate located in the Greenwood District Sebastian County, Arkansas, to-wit:

West half of the Southeast quarter of the Northwest quarter and the Southwest quarter of the Northwest quarter which lies north of Cherokee Creek, and the South twenty-three (23) acres of the Northwest quarter of the Northwest quarter, all in Section twenty-seven (27); and the East half of the Northeast quarter, the East half of the Northwest quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter north of Cherokee Creek, and the East half of the Northeast quarter of the Southeast quarter, all in Section twenty-eight (28), Township Five (5) North, Range Thirty-one (31) West; for a period of twenty-five years from the date of said lease with the privilege to the Prairie Creek Coal Company among other things, of removing the coal from under the premises so leased; and

Whereas, the Prairie Creek Coal Company has heretofore conveyed its rights under this lease to the American Smokeless Coal Company; and

Whereas, the American Smokeless Coal Company has made a certain Deed of Trust, dated January 28, 1903, to
3332 the North American Trust Company, Trustee, to secure a certain mortgage, which mortgage includes the above leasehold among other property; and

Whereas, the said lease, together with all improvements thereon, has been sold to the Cherokee Construction Company at execution sale; and

Whereas, Joseph M. Spradling, of Hartford, Arkansas, desires to purchase all of the rights of the Cherokee Construction Company and the rights of the American Smokeless Coal Company, if it has any, in and to said lease and the improvements on said leased premises; and

Whereas, the said Cherokee Construction Company and the American Smokeless Coal Company are willing to sell, assign, and convey the said lease, with all of the improvements thereon, to the said Joseph M. Spradling;

Now, Therefore, This Agreement Witnesseth:

That for and in consideration of the sum of Four thousand dollars ($4,000.00), the said Cherokee Construction Company and the American Smokeless Coal Company do hereby sell, assign convey and transfer the said lease, together with all the improvements thereon, to the said Joseph M. Spradling, Fifteen hundred dollars ($1,500) of said consideration to be paid by the said Spradling to the Cherokee Construction Company upon the execution of this instrument, and the balance of said consideration, Twenty-five hundred dollars ($2,500), to be paid by the said Spradling to the said Cherokee Construction Company within thirty (30) days after the said Cherokee Construction Company releases, or
3333 causes to be released, the said lease, with the improvements thereon, from the said mortgage of date January 28, 1903, from the American Smokeless Coal Company to the North American Trust Company; the said property to be released from said mortgage according to the provisions contained in said mortgage.

Second: The Cherokee Construction Company and the American Smokeless Coal Company do hereby covenant and agree to idemnify and save harmless the said Joseph M. Spradling, his heirs and assigns, from any claim or claims arising under said mortgage and Deed of Trust, and covenant and agree to forever warrant and defend the said Joseph M. Spradling, his heirs and assigns, in the free and undisturbed possession of said property from and because of any person or persons claiming under the said American Smokeless Coal Company or the Cherokee Construction Company.

Third: The said Joseph M. Spradling covenants and agrees to assume the payment of all royalties due the said Boone under said lease for the year 1905 and subsequent years, and to assume all obligations under said lease.

Witness our hands and seals this 30th day of October, 1905.

CHEROKEE CONSTRUCTION
(Seal) COMPANY,
By C. E. Ingersoll,
Vice-President.

Attest: H. E. Yarnall, Secretary

AMERICAN SMOKELESS COAL
(Seal) COMPANY,
By C. E. Ingersoll,
President.

Attest: H. E. Yarnall, Secretary.

JOSEPH M. SPRADLING.

3334 United States of America,
Indian Territory,
Northern District.

Be It Remembered, that on this day came before me, a Notary Public duly commissioned and acting within and for the District aforesaid, C. E. Ingersoll, to me personally well known to be the Vice President of the Cherokee Construction Company and the President of the American Smokeless Coal Company, corporations, and the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he had executed the said instrument as such Vice President and President, for and on behalf of said corporations as his and their free act and deed, and for the purposes and consideration therein mentioned.

Witness my hand and notarial seal this 11th day of April, 1907.

FRANK C. LABOURIN,
(Seal) Notary Public.

My commission expires November 23, 1909.

Certificate of Record.

State of Arkansas,
County of Sebastian,
Greenwood District.

I, John E, Tatum, Clerk of the Circuit Court and Ex-Officio Recorder of the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 10th day of May, A. D.
3335 1907, at 1 o'clock p. m. and the same is now duly recorded with the acknowledgements and certificates thereon, "Record Book 32" page 621.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 14th day of May, A. D. 1907.

JOHN E. TATUM,
(Seal) Circuit Clerk and Ex-Officio Recorder.
By R. A. Harper, Deputy Clerk.

3336 Plaintiffs' Exhibit 111.

Deed of Release.

Whereas, on the 13th day of January, 1903, T. W. M. Boone and Ella Boone, his wife, leased to the Prairie Creek Coal

Company, its successors and assigns, the following described real estate located in the Greenwood District, Sebastian County, Arkansas, to-wit:

The West half of the Southeast quarter of the Northwest quarter of the Southwest quarter of the Northwest quarter which lies north of Cherokee Creek, and the south twenty-three (23) acres of the Northwest quarter of the Northwest quarter, all in section Twenty-seven (27); and the East half of the Northeast quarter, the East half of the Northwest quarter, the Southwest quarter of the Northeast quarter north of Cherokee Creek, and the East half of the Northeast quarter of the Southeast quarter, all in Section twenty-eight (28), Township Five (5) North, Range Thirty-one (31) West;

for a period of twenty-five years from the date of said lease with the privilege to the Prairie Creek Coal Company, among other things, of removing the coal from under the premises so leased; and

Whereas, the Prairie Creek Coal Company has heretofore conveyed its rights under this lease to the American Smokeless Coal Company; and

Whereas, the American Smokeless Coal Company has made a certain Deed of Trust, dated January 28, 1903, to the North American Trust Company, Trustee, to secure a certain
3337 mortgage, which mortgage includes the above leasehold among other property; and

Whereas, the Cherokee Construction Company has purchased at execution sale the said lease, together with all the improvements thereon; and

Whereas, Joseph M. Spradling desires to purchase from the Cherokee Construction Company the said lease, together with the improvements thereon; and

Whereas, the Cherokee Construction Company is the owner of all of the bonds, except one, secured under the said mortgage of January 28, 1903, given by the American Smokeless Coal Company to the North American Trust Company, Trustee, and now outstanding; and

Whereas, it is provided in Section one, Article Nine of said mortgage that from time to time the holders of two-thirds in amount of all the bonds secured by said mortgage and outstanding at the time may be an instrument or instruments in writing, signed by two-thirds in interest of such bondholders shall have power to assent to and authorize the release of any

part of the property held by the Trustee under said mortgage;

Now, Therefore, the Cherokee Construction Company, as the owner of more than two-thirds of the bonds secured and outstanding under said mortgage, for and in consideration of the sum of Four thousand dollars ($4,000.00) in hand paid, the receipt of which is hereby acknowledged, does hereby release, and forever discharge the said lease and real
3338 state above described, together with all the improvements thereon, from the terms, provisions and obligations of said mortgage of date January 28, 1903 and recorded in the office of the Circuit Clerk and Ex-Officio Recorder at Greenwood for Sebastian County, Arkansas in Book 31, page 15.

In Testimony Whereof, the said Cherokee Construction Company has caused this instrument to be executed by its proper officers and the seal of the company thereto affixed, this 30th day of October, 1905.

CHEROKEE CONSTRUCTION COMPANY

(Seal) By C. E. Ingersoll, Vice-President.

Attest: H. E. Yarnall, Secretary

Commonwealth of Pennsylvania,
City and County of Philadelphia—ss.

Be It Remembered, that on this day, came before me, a Notary Public, duly commissioned and acting within and for the City and County aforesaid, C. E. Ingersoll, and H. E. Yarnall, to me personally well known to be the Vice President and Secretary respectively, of the Cherokee Construction Company, a corporation, and the persons whose names are subscribed to the above and foregoing instrument, and acknowledged to me that they, and each of them had executed the said instrument as such Vice President and Secretary for and on behalf of said corporation as their and its free act and deed and for the purposes and consideration therein mentioned.

3339 Witness my hand and notarial seal this 30th day of October, 1905.

OSCAR H. PRICE,

(Seal) Notary Public.

My commission expires at the end of next session of the Senate.

3340 Q. I will ask you to identify Plaintiffs Exhibit 158.
A. This is a lease from the Mammoth Vein Coal Company to the Coronado Coal Company of 16 mine cars.

Mr. Drinker: I offer that lease in evidence, Exhibit 158.

(Exhibit 158, so offered in evidence, is in words and figures as follows:)

3341 Plaintiffs' Exhibit 158.

Mine Car Lease.

Between

Mammith Vein Coal Company and Coronado Coal Company

For and in consideration of $1.00 per month per car the Mammoth Vein Coal Company hereby leases to the Coronado Coal Company Sixteen (16) mine cars for a period of one (1) year from date. It being understood that the Coronado Coal Company are to keep those cars in repair and return them to the Mammoth Vein Coal Company at any time the Mammoth Vein Coal Company wishes them and in as good repair as when rented to the Coronado Coal Company.

The Mammoth Vein Coal Company shall have the right at any time to demand the return of these cars and the Coronado Coal Company shall return them within 15 days after receiving notice to return the cars in as good repair as when received.

The amount of rental shall be paid on or before the 25th of the month for the preceding month. In case any car is destroyed while possession of the Coronado Coal Company the Coronado Coal Company shall either pay the Mammoth Vein Coal Company the cost price of the car or furnish them a car to take its place of the same type and as good as when received.

MAMMOTH VEIN COAL COMPANY
By H. Denman,

CORONADO COAL COMPANY
By H. Denman

Midland, Ark., January 3, 1910.

3342 Q. I now hand you Plaintiffs Exhibit 114, and will ask you what that is.

A. This is a lease from the Mammoth Vein Royalty Company to the Mammoth Vein Coal Company to certain lands at Mammoth Mine No. 1, on which was located the plants and improvements.

Mr. Drinker: I offer Exhibit 114 in evidence.

(Exhibit 114, so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 114.

"Lease On Coal Land.

This Agreement, made this first day of October, One Thousand Nine Hundred and Four (1904) by and between Mammoth Vein Royalty Company, of the first part, herein after designated "Lessor", and the Mammoth Vein Coal Company, of the second part hereinafter designated "Lessor", Witnesseth:

That Whereas, the said Lessor has become and is the owner of a coal land hereinafter described which is acquired for the purpose of leasing the same for a royalty to the end that he might receive royalties on a large production of coal from the said hereinafter described premises,

Now Therefore, the parties hereto enter into the following covenants and agreements, to-wit:

First: The said Lessor, for and in consideration of the rents, royalties, covenants and agreements hereinafter mentioned and specified on the part of the said Lessee to be paid and performed, has leased, demised and let and does hereby lease, demise and let unto the said Lessee for the term of seventeen (17) years from the first day of October, 1904, unless 500,000 tons of coal be mined by the Lessee from the premises before the expiration of seventeen years in which event the lease shall terminate when 500,000 tons
3343 of coal shall have been mined, the following premises situated in the County of Sebastian, State of Arkansas, to wit: SE ¼ of SE ¼ Section 3; SW ¼ of SW Section 2; Lots 15, 16 and 21 of Section 2; all in Township 4 North, Range 32 West.

Second: With the exclusive right to dig for and mine, remove and dispose of coal in, under and upon the above described land.

Third: The right to cut and use for the purpose of mining operations, any timber on said above described land.

Fourth: The right to erect miners' houses, tipples and such other buildings or works, including water supply reservoirs, as may be necessary or convenient in the operation of the said mine, and to erect and operate coke ovens upon any portion of the said described tract of land, together with right to dig, hew and yse for the purpose of said mining operations such building stones, fire clay and other buildmaterials as may be found upon said tract of land above described.

Fifth: The firht to use such running water as may be found upon any of the tracts hereby leased, or found upon the surface which covers any of the coal hereby leased, to the extent that the Lessor has the right to use the same; Provided, such use of the said water shall in no way interfere with its use on other land now owned or which may hereafter be acquired by the said Lessor.

Sixth: The said Lessor hereby covenants and agrees to and with the said Lessee that it shall and may, at all times hereafter during the continuance of the term hereby granted,
peacefully and quietly have, hold, possess and enjoy
3344 the premises and exercise the rights hereby demised,
without let or hindrance by or from the said Lessor or by or from any person or persons lawfully claiming the same or any part thereof, by, from or under him.

Seventh: The said Lessor hereby retains and reserves the right, and the Lessee hereby covenants that the said Lessor shall have the right, by his officers, servants, agents and engineers, at all times to enter into and upon the said premises, both on and below the surface, and to inspect, examine and make surveys thereof; and the said Lessee doth covenant and agree to accurately survey, not less frequently than once in every six (6) months, all new mine workings, entries, air courses, slopes, planes, shafts and rooms, and to plat the same on a map to a scale not less than two hundred (200) feet to one (1) inch, and to furnish the Lessor, not less frequently than once in six months, with an accurate copy of said map.

Eighth: The said Lessor further reserves during the continuance of this lease, for himself and his assigns and lessees, and any and all of them the right of way over any and every part and portion of the herein demised premises for roads, railways, waterways and side tracks, and also such use as they and any and all of them may desire of all tracks, roads railways, waterways and side tracks constructed by the said Lessee upon the herein demised prem-

ises as provided hereinafter in this paragraph. Provided, that proper compensation shall be made by the said Lessor and his assigns and lessees, and any and all of them, for such use of said tracks, roads, railways, waterways and side tracks constructed by the said Lessee, such proper compensation, if not mutually agreed on, to be determined by arbitration as hereinafter provided.

3345 Ninth: It is expressly understood that one of the purposes of this lease is to secure from the leased land the maximum proportion of all the coal contained therein; and to accomplish this end, among others, the Lessee expressly agrees to conduct the operation of the mine or mines on the premises hereby demised in a manner calculated to insure the eventual mining of the largest amount of coal from the entire premises hereby demised; and for the purpose of assuring this end to the Lessor with greater certainty, the Lessee agrees to maintain in good working order all entries and gangways, air courses, slopes, shafts and planes until the coal between the faces of any of the said entries, gangways, air courses, slopes, shafts or planes and that portion of the boundary of the demised premises towards which any of said entries, gangways, air courses, slopes, shafts or planes may be directed is mined out as fully as it can be mined out by first-class mining methods, or until the Lessor gives his consent in writing to the abandonment of any of the same. And the Lessee agrees to promptly repair any damage that may occur to any of said workings.

It is expressly understood that all workings underground shall be laid out and conducted in a thorough and substantial manner and in accordance with first-class mining methods, and expressly with a view to the fullest possible development of the demised premises; and that the Lessee shall maintain pillars in the mine or mines of dimensions fully sufficient to support the roof and shall not draw said pillars until such time as the coal between them and the boundary of the demised premises is mined out.

3346 And it is further expressly agreed that the Lessee shall conduct no stripping operation on the coal beds hereby demised without the written consent of the Lessor being first had, and that the Lessee shall leave intact at all times a strip of coal fifty yards in breadth next adjoining the boundaries of the demised premises, except where the said strip is penetrated by the principal slope and air course at the outcrop of the coal bed.

That the Lessee shall maintain all buildings and machinery and other appurtenances to the mine in good condition and working order; that it will not do, or permit, or suffer to be done any damage or injury to the said premises, property or appurtenances; that it will so arranged and conduct the said mining operations as to cause no interference either with the use by the said Lessor of the surface covering the coal hereby leased, excepting that surface hereby demised or with land of the Lessor bounding on the tracts of land hereby leased, excepting surface hereby demised, or with land of the said Lessor bounding on the tracts of land hereby leased; and that the said mining operations shall not injure or endanger any buildings or structures which the said Lessor now has standing or may hereafter cause to be constructed on the said surface or bounding lands.

The Lessee hereby expressly agrees that it will at all times keep the workings of the mines operated by it on the said demised premises for water and dangerous gases.

Tenth: The said Lessee hereby agrees to keep inviolate all and singular the duties imposed by the laws of the State of Arkansas regulating the mining of coal and agrees to protect the Lessor against the violation of said laws by said Lessee.

3347 Eleventh: As a part of the consideration for this lease the said Lessee hereby covenants and agrees to assume all liability in the operation of said mine and hereby agrees to protect and save harmless the said Lessor from any claim, damage, personal injury, or death which may occur to any person or persons by reason of the negligence of the said Lessee or its servants and employes in the operation of said mine.

Twelfth: The said Lessee covenants that it will at the termination of this lease, deliver up and surrender to the said Lessor, to be and remain the property of the same, all and singular the premises, rights and privileges herein demised and leased, together with all the mines, entries, openings, tramways, inclines, chutes tipples, tipple houses, cross ties, sleepers, sills and appurtenances whatsoever, in good working order and repair; but on such termination of this lease the working tools and implements used in mining, together with all machinery, miners' houses, engines, fans, boilers, pumps, ropes, weighing scales, rails and pit cars placed upon said premises by the said Lessee shall be and remain the property of the said Lessee. But it is hereby expressly agreed that upon such termination of this lease

the said Lessor shall have the right as regards the said working tools, mining implements, machinery, tracks, pit cars, rails and miners' houses, declared as aforesaid to be the property of the said Lessee, to purchase the same from the said Lessee at a fair market price, to be determined, it not mutually agreed on, by arbitrators as hereinafter provided for. If the said Lessor shall not avail himself of such right of purchase, then the said Lessee may remove the same, provided all royalties then due the said Lessor by the said Lessee be paid and all and singular the other coven-
3348 ants and agreements of this lease be performed, such right or removal, however, to terminate ninety (90) days after the termination of said lease.

Thirteenth: The said Lessee further covenants and agrees that it will not at any time during the term of this lease assign, either voluntarily or involuntarily, sub-let or transfer the same or any part thereof, or sub-let or demise the said premises or any part thereof, to any person or persons or corporation whatsoever, without the written consent of the said Lessor, under his seal, first had and obtained; but said Lessee may construct necessary dwellings for its employes upon the tract as aforesaid leased for, in part, that purpose, and may sub-let such dwellings to its employes while they remain in the service of said Lessee.

Fourteenth: The said Lessee hereby covenants and agrees to pay to the said Lessor a rent or royalty equal to eight (8) cents per ton on each and every ton of two thousand (2,000) pounds of coal mined or dug from any of the demised premises, but the said rent shall amount to not less during any certain period than the minimum rental described hereinafter for said period.

The minimum royalty throughout the year commencing October first, 1904, and for each year thereafter during the term of this lease, shall be Two Thousand Four Hundred Dollars ($2,400.00), and in addition thereto the Lessee shall pay the Lessor eight (8) cents per ton of two thousand (2,000) pounds on all coal mined or dug from the demised premises in excess of thirty thousand (30,000) tons during any of said years.

Fifteenth: And the said Lessor, if he so elects, shall have the right to weigh all coal and coke loaded on cars before the same are shipped, and the said Lessee covenants that
3349 the said Lessor may so weigh all said coal and coke before shipment, without let or hindrance, from all the operations of the said Lessee; and shall any dispute arise as to the accuracy of the scales on which the coal and coke are

weighed, either by the said Lessor or the said Lessee, then such dispute shall be settled by testing the said scales by government weight.

The said Lessee further covenants and agrees to furnish within five (5) days from the last day of every calendar month at the office of the Lessor in Fort Smith, Arkansas, a report properly authenticated, showing the coal mined, or dug and used or removed from the said mine during the preceding calendar month, and to pay to such person or corporation as said Lessor shall direct the amount of the rent or royalty due for the said preceding month; and if any coal shall have been taken from the said premises and wasted or left as slack coal in the mines, and not weighed and not accounted for, the quantity of the same shall be ascertained, an account rendered for the same and payment made at the rate above named. And the Lessee covenants that it will keep a book or books of account of the mining and shipping of coal and coke, and that said book or books shall be open to the inspection of said Lessors and their agents or attorneys for the purpose of comparing and verifying the accounts rendered.

Sixteenth: Should the royalty on coal mined an any year not amount to the minimum rental for that year, then the said Lessee covenants and agrees that it will pay to the said Lessor dead rentals so that the same shall equal the minimum rental aforesaid, but the said Lessee shall have the privilege of mining during the next succeeding year, free from
3350 royalty, such a quantity of coal over and above the quantity which will yield the said minimum rental for that year, as will in royalties reimburse the said Lessee for the dead rentals paid during the preceding year.

Seventeenth: The Lessee shall pay royalties or rentals as set out above as follows:

The minimum royalties shall be payable quarterly in advance, on the first days of January, April, July and October of each year.

The royalties or rentals in excess of one-twelfth (1/12) of the minimum annual royalties or rentals, shall be paid on the twentieth day of each calendar month next succeeding that in which the coal was mined, and shall be paid, in both cases at the principal office of the Lessor at Fort Smith, Ark.

Eighteenth: The said Lessee covenants and agrees to pay all taxes that may be assessed against the demised premises and the improvements thereon, and upon the coal mined or coke manufactured during the continuance of this lease.

Nineteenth: Any difference as to the proper manner of mining or as to the quantity of available coal to be left standing before abandoning any entry, room, shaft, working or other opening, or any difference whatsoever which may arise as to the method of skillfully conducting said mining operation and any other matter herein specifically referred to arbitrators, shall, upon motion of either party to this lease, be referred for settlement to a board of arbitrators, which shall be constituted and chosen in the following manner: The party alleging such non-performance or breach by the other shall give ten days' notice in writing to the other party of the appointment of an arbitrator to act hereunder, and there-
3351 upon it shall be the duty of the party so notified to appoint within five (5) days an arbitrator to act with the one thus appointed. In the event of a failure to appoint within five (5) days, the other party may appoint one in his or their stead. In the event that the two thus appointed shall fail to agree, they shall select a third party, and in the event of their failing to agree on the selection of such third member, within five (5) days after their failure to agree as to the matter or matters in dispute, the third member may, on application of either party, be appointed by the Judge of the United States Circuit Court for the Western District of Arkansas. The decision of the majority of the three arbitrators when finally settled shall be binding and conclusive upon the parties hereto.

Twentieth: It is understood and agreed that the provisions of a certain contract by and between the Mammoth Vein Coal Company and the Midland Valley Railroad Company, of date April 18th, 1904, covering the shipping and routing of coal and coke from the lands demised herein shall be binding upon the said Lessee during the life of this agreement; a copy of said contract of date April 18th, 1904, is attached to and made a part hereof.

Twenty-first: It is further covenanted and agreed by and between the parties hereto that in the event that the said Lessee shall delay or refuse to comply with the terms of this lease and to keep and perform the covenants and agreements on its part herein stipulated and provided for, then the said Lessor shall, at his option, after sixty (60) days' notice to the Lessee, have the right to re-enter upon the demised premises as full and complete possession as if the term of this lease were fully performed and ended by limitation.

3352 Twenty-second: In the event of such termination of this lease for a breach of contract by the Lessee, the

said Lessee shall not have the right to remove from the premises any of the coal which may have been mined previous to such termination of this lease, or working tools, machinery or other property, until the said Lessee has made full satisfaction to the Lessor for any and all damage which he may sutatin by reason of such delay or refusal to comply with the terms of this lease; and in that event none of said properties aforesaid shall be removed from said premises until all royalties and other payments due the Lessor hereunder shall have been paid to the said Lessor; otherwise, such coal, tools, machinery and property shall become the property of the said Lessor. And in the event of any controversy arising out of any matter in this paragraph contained, the same shall be referred to the board of arbitrators as hereinbefore provided, and all said properties shall remain on said premises until a decision is reached by the arbitrators.

Twenty-third: It is hereby expressly agreed that nothing herein contained shall interfere with the right on the part of the said Lessor to distrain for rent due and in arrears under the terms of this lease.

3353 Twenty-fourth: It is hereby agreed that all rights vested in the said Lessor by this lease shall pass to and vest in his successors or assigns, and that all covenants and agreements on the part of the said Lessee to be kept and performed shall be kept and performed by the said Lessee and by its heirs, executors, administrators and assigns, or by the successors and assigns of the Lessee if the Lessee is a corporation, for the benefit and advantage of the Lessor and his successors and assigns.

Twenty-fifth: It is hereby agreed that the said Lessee shall keep the said Lessor informed of the place of its offices and the names of its agents, whether in this state, or elsewhere; and that the said Lessor shall keep the said Lessee informed of any change in or transfer of the said Lessor under this lease.

Witness the hands and corporate seals of the parties hereto in duplicate, each an original, the day and date first above written.

(Seal) MAMMOTH VEIN ROYALTY CO.
F. Bache, President,
Lessor

Attest: W. J. Schols,
Secretary.

(Seal) MAMMOTH VEIN COAL COMPANY,
By F. Bache, President.

Attest:
Heber Denman,
Secretary.

(Copy)

Contract

This Agreement entered into this Eighteenth day of April, 1904, by and between the Mammoth Vein Coal Company, an Arkansas Corporation, its successors and assigns, party of the first part, and the Midland Valley Railroad Company,
3354 an Arkansas corporation, its successors and assigns, party of the second part, Witnesseth:

That, Whereas, the Mammoth Vein Coal Company is the owner of that certain land located in Sebastian County, State of Arkansas, described as follows:

SE ¼ of SE ¼ Section 3; SW ¼ of SW ¼ Section 2; Lots 15, 16 and 21 of Section 2; all in Township 4 North, Range 32 West;

And, Whereas, the Midland Valley Railroad Company is operating a line of railroad over parts of said above described land;

And Whereas, the Railroad has built certain tracks to a coal tipple located on said above described lands without expense to the Mammoth Vein Coal Company;

Now, Therefore, Be It Agreed,

1st. That the Mammoth Vein Coal Company shall ship all coal mined from the aforesaid tract of land to or towards its destination by way of the Midland Valley Railroad. And the Mammoth Vein Coal Company agrees to pay to the Midland Valley Railroad Company twenty-five cents (25@) per ton

as agreed on liquidated damages for any coal shipped in violation of this clause.

2nd. The Midland Valley Railroad Company agrees at all times to furnish the Mammoth Vein Coal Company sufficient cars at its tipples to enable it to operate its mines not less than ninety per cent (90%) of the number of hours per month that any other mine on the line of the Midland Valley Railroad is operated.

Witness the hands and corporate seals of the parties
3355 hereto, in duplicate, each an original, on the day and date first above written.

MAMMOTH VEIN COAL COMPANY,
By F. Bache, President.

Attest:
Heber Denman,
Secretary.

MIDLAND VALLEY RAILROAD COMPANY,
By C. E. Ingersoll, President.

Attest:
H. E. Yarnall,
Secretary.

3356 Mr. Drinker: That is all, if your Honor please, except tomorrow morning I would like to have him identify two other leases, that we have not been able to find yet.

The Court: The court has kept no track of these various offers of these various exhibits, as to what exhibits have been identified, and whether or not they have all been offered. One or two you omitted to offer, and you passed on to others, and I don't know whether you offered them later or not.

Mr. Drinker: May I offer in evidence at this time all of the exhibits which have been identified here this afternoon by the witness Mr. Denman in his re-examination at this time, and which I have neglected to offer in evidence heretofore.

The Court: Those exhibits, none of them were objected to.

Mr. Warrum: One we objected to.

The Court: The one that was objected to was received over the objection.

Mr. Warrum: There was an objection to one, and they consented to withdraw it.

Mr. Drinker: The Miellmier lease was objected to, that 65 cent lease, and the objection was overruled.

Mr. McDonough: This one was objected to, Exhibit 115, and was withdrawn.

The Court: They will all be admitted, except that, and they will also be considered as read, and either party can refer to any part they wish.

Mr. Warrum: The court does not exclude our exceptions?

3357 The Court: No, you might add to what I said, where there is an objection, the exceptions are saved at this time. I remember just of one, but perhaps there were two.

Witness excused.

(Before the adjournment of court, the court requested counsel, if they so desired, to furnish him a list of cases on the important points involved in the case, without any argument, just the title of the case, and the page and book.)

Thereupon, court adjourned until Friday, November 9th, 1917, at 9:30 o'clock, a. m.

3358 Fort Smith, Arkansas.

Friday, November 9, 1917, 9:30 o'clock A. M.

Pursuant to adjournment as last [aforesiad] came all of the parties as before on Friday November 9, 1917 at 9:30 o'clock A. M. and the trial of the case proceeded as follows:

The Court: Just a moment gentlemen, before you proceed this morning. It has occurred to the Court that yesterday, when I sustained the objection to that class of testimony referring to he replacement of the property,—the cost of the replacement of the property, that the Court said simply this; that the proper measure of damages here is the value of the property destroyed. I should have added to that that it is the rule which was in force the day before and under which the damages to this particular property has been shown, that in the judgment of the Court that damage may be shown by the statement of the witness, who has shown himself qualified to testify, knowing the property damaged, and knowing it to be damaged to that amount, and that it shall be measured by the value of this property just before the injury and the reasonable value just after the injury, the damage being the differ-

ence, it being a mathematical computation. And the plaintiffs are entitled to show that, the value of the property just before the injury and the value of the property just after the injury, with the mathematical calculation as to the difference.

That is the rule as the Court understands it, that I enforced with reference to this value, by other witnesses, which has been entirely covered by the witness Denman.

3359 And it has occurred to me that my statement in sustaining the objection did not express this fully.

Mr. Warrum: This is to amplify the record of yesterday?

The Court: Yes, this is to be added to what I said when I sustained the defendants objection because that is the [siutation] as the Court understands it. And it occurred to me that possibly I ought not to have given so limited a reason for sustaining the objection.

HEBER DENMAN, recalled as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Redirect Examination

By Mr. Drinker:

Q. Mr. Denman, I hand you a paper marked Plaintiffs Exhibit No. 157 and ask you whether that is one of the leases, a supplemental lease, made by the receivers since the receivership on the property in question, to which you referred in your testimony yesterday on redirect examination, and in connection with which testimony objection was made on the ground that the original lease was not produced?

A. That is not one of the mines that was referred to. This is for a lease to a mine near Berma on the lands of the Denman Coal Company.

Q. I hand you Plaintiffs Exhibit No. 158-a and will ask you if that is one of the leases referred to.

A. Yes, sir, that is one of the leases referred to.

Q. What is that paper?

A. That is a lease from the receivers, C. H. Finley and

3360 H. P. Hilliard, receivers for the Hartford Coal Company to Abe Roughley, Tom Patterson, and John W. White.

Q. What is the date of that?

A. The 2nd of April, 1917.

Mr. Drinker: We offer this lease which has been marked Plaintiffs Exhibit No. 158-a in evidence.

The Court: It will be received.

(Exhibit No. 158, so offered in evidence is in words and figures following, to-wit:)

Exhibit No. 158-a.

"Lease Contract.

Agreement made and entered into this, the 2nd day of April, 1917, by and between Clyde H. Finley and H. P. Hilliard, Receivers for the Hartford Coal Company, parties of the first part, hereinafter known as the Lessor, and Abe Roughley Tom Patterson and John W. White, doing business as the Roughly Patterson White Coal Company, unincorporated, parties of the second part, hereinafter known as the Lessee. Witnesseth:

That for and in consideration of the payment hereinafter mentioned to be paid by the lessee to the lessor and other covenants to be performed by the lessee, the lessor hereby doth lease to the lessee for the sole purpose of mining, digging, removing, and selling coal, all the coal under the following described parcel of land, to-wit:

Beginning at the Northeast corner of the Northwest quarter (NW¼) of Section Two (2), Township Four (4), North, Range Thirty-two (32) West; thence South two hundred (200) feet along the West line of the Northwest quarter (NW¼) of the Southwest quarter (SW¼) of Section Two (2); thence West Seven hundred twenty five (725) feet; thence North Three Hundred fifty 350 feet; thence East
3361 Seven hundred twenty five (725) feet; thence South One Hundred fifty (150) feet to point of beginning.

All that part of the North half (N½) of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section Two (2), Township Four (4) North, Range Thirty-two (32) West, lying North of the main line of the Midland Valley Railroad Company, and known also as Lot Seven (7), Block Two (2), Fairhill Addition to the town of Camp Beulah.

The following conditions are hereby mutually agreed to by the parties hereto:—

First: The lessee shall have the sole right to dig, mine, and remove and sell the coal from under the above described tract of land

Second: This lease shall remain in effect for two years from the day and date first above written, unless cancelled, either voluntarily or involuntarily, by one of the parties hereto, according to the terms of the contract.

Third: The lessor through his engineer or agents shall have access to the workings of the lessee's property at any and all times to make surveys, inspections or measurements with free access at all times without hindrance.

Fourth: The lessee shall keep an accurate record of all coal mined and removed from these premises for any purpose whatsoever. On or before the 5th of each month he shall turn into the office of the Receiver at Fort Smith a true account of all coal mined, of all sorts and grades and on or before
3362 the 15th of each month he shall pay for all coal mined, dug and removed from above premises during the previous month at the rate of $0.20 per ton of 2000 lbs.

No slack or fine coal shall be left in the workings and if any such slack or fine coal is left in the workings, the amount of same shall be ascertained and the lessee shall pay to the lessor the stipulated amount of royalty, namely, $0.20 per ton.

At the beginning of every three calendar months beginning with the month of July, 1917, the lessee shall cause a survey of the mine to be made by H. O. Lewis or such surveyor as the lessor shall name of the mine workings on the land herein leased, and in making this survey the engineer shall measure the amount of coal removed from said premises. This estimate shall be final and the lessor shall pay for the full amount of coal removed as shown by this estimate; this survey being made as a check on the reports of the amount of coal mined as shown by the lessee.

The lessor shall have the right to examine the mine bulletins and records of all railroad shipments made by the lessee and any other books or information showing the amount of coal removed.

As a minimum royalty on the above premises, the lessee shall pay to the lessor at this office in Fort Smith on or before the 15th day of each month a minimum royalty of Fifteen ($15.00) Dollars per month which shall apply as a royalty on that month. This minimum royalty of $15.00 per month shall apply as a credit on any coal mined during that month. In case of failure to pay the full amount of the aforesaid mentioned royalty when the same becomes due the lessor shall

have the right and privilege of cancelling this contract
3363 and take immediate possession of the property without
any liability for so doing and without any process of
law.

Fifth: The lessee shall not drive any rooms, entries, air courses or other place more than 22 ft. in width and shall leave a pillar between all rooms, entries, and air courses of not less than 12 ft. in thickness and no pillars shall be robbed, drawn, or removed.

The operations on this and shall be conducted in a proper and workmanlike manner and in such a way as to support the surface of the land and prevent surface water from coming into the mine.

Sixth: The lessor shall not be liable in any way for damages on account of accidents or injuries to any of the employees of the lessee and shall be in no way liable for any debts or obligations contracted voluntarily or involuntarily by the lessee.

Seventh: This contract and lease shall not be assigned or sub-let or transferred by the lessee either voluntarily or involuntarily or by any process of law without the written consent of the lessor first being granted in writing, granting privilege to make such assignment or transfer of this lease.

Eighth: In case the lessee fails to operate this pit for sixty consecutive days or to conduct the mining operations according to the terms of this contract or fails to comply with the contract in any manner the lessor shall have the right to terminate and cancel this contract by giving Ten days' notice in
writing to the lessee and after the expiration of the Ten
3364 days' notice to take immediate possession of the property without any process of law.

Ninth: The amount due for royalty shall be a lien on any rails, cars, tools, supplies or improvements of any character on said lands, and the lessee shall not have the right to remove any material from said lands until all royalties and pay rolls have been paid in full.

Tenth: The lessor shall have the right to cancel this contract at any time without liability for so doing by giving Ninety days' notice in writing to the lessee. At the expiration of the Ninety days' notice the lessor shall have the right to take possession of the property so leased and without liability for so doing.

Eleventh: In case this contract is cancelled by the lessor as provided for in the preceding paragraph, it is agreed between the parties hereto that a new contract shall be entered into covering the removal of the coal from that part of the North half (N½) of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section Two (2), Township Four (4) North, Range Thirty-two (32) West, lying North of the main line of the Midland Valley Railroad Company, at the same rate of royalty as provided for in this Lease Contract, which new lease shall provide for a minimum royalty of $15.00 per month.

Twelfth: It is further understood that this contract shall be valid and binding only when approved by the United
3365 States Court having jurisdiction over the receivership of the Hartford Coal Company.

In witness whereof, the said parties have hereunto attached their hands and seals this the day and date first above written.

HARTFORD COAL COMPANY,
By Clyde H. Finley,
H. P. Hilliard, Receivers,
Parties of the first part.

ROUGHLEY PATTERSON WHITE COAL CO.,
By Abe Roughley,
John W. White,
Thomas Patterson,
Parties of the second part.

Acknowledgment.

State of Arkansas,
County of Sebastian—ss.

On this day personally appeared before me, the undersigned a Notary Public duly commissioned and acting within and for the County and State aforesaid, Abe Roughley, Tom Patterson and John W. White, to me well known, and each acknowledged that he had executed the foregoing instrument for the consideration and purposes therein contained and set forth.

In testimony whereof, I have hereunto set my hand and official seal as such Notary Public within and for the County and State aforesaid on this the 18 day of August, 1917.

(Signed) D. E. GUSTAFSON,
(Seal) Notary Public.

My Commission expires March 22, 1920.

3366 State of Arkansas,
County of Sebastian—ss.

On this day personally appeared before me, the undersigned a Notary Public duly commissioned and acting within and for the County and State aforesaid, Clyde H. Finley and H. P. Hilliard, Receivers of the Hartford Coal Company, to me well known, and each acknowledged that he had executed the foregoing instrument for the consideration and purposes therein contained and set forth.

In testimony whereof, I have hereunto set my hand and official seal as such Notary Public within and for the County and State aforesaid on this the 27 day of August, 1917.

(Signed) E. L. RICHARDSON,
(Seal). Notary Public.

My Commission expires June 23, 1920."

3367 Mr. Warrum: The defendants separately move to strike this exhibit from the record as relating to transactions between the receivers and others since the institution of this suit and is not competent or binding on the defendants and it does not tend to prove any issuable fact with relation to the damages.

The Court: For what is it offered?

Mr. Drinker: On the examination of Mr. Denman counsel for the other side asked him if the receivers had not made some leases of this Hartford Coal Property, after the receivership, and he said they had. On redirect examination I asked him the rate of royalty reserved in these leases, and the objection was made that the lease was the best evidence, and this is the lease.

The Court: It will be received as showing the rate of royalty, as it is the best evidence.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: That is all, Mr. Denman.

Mr. Covington: No more questions.

(Witness excused.)

3368 GEORGE EYSTER, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. State your name. A. George Eyster.

Q. State your business, Mr. Eister. A. Mining engineer.

Q. You are a graduate of what institution?

A. Lafayette.

Q. In what year? A. 1911.

Q. What degree? A. Mining engineer.

Q. How long did you study there? A. Four years.

Q. In mining engineering all that time? A. Yes.

Q. After your graduation what did you do in connection with your profession?

A. After graduation I came to Arkansas and took up the coal business and went into the coal business with the Pennsylvania Mining Company.

Q. Where is that? A. At Clarksville.

Q. What position did you occupy from that time up to the present time?

A. I went first as a surveyor and was later put on as top foreman. I was top foreman for several months and then mine foreman and top foreman for a year. After that I was made engineer in charge and later superintendent.

Q. What position do you hold now?

A. Superintendent and assistant manager.

Q. How long have you occupied that position?

A. About four years.

Q. Have you examined other coal properties in Ar-
3369 kansas besides that? A. I have.

Q. To what extent?

A. Well, I have examined properties in Johnson County, and I have examined the one large tract on which the Pennsylvania Mining Company is now opening a mine. I have examined operating mines of several other companies and I have made examinations in Sebastian County.

Q. To what extent has your examination in Sebastian County gone?

A. I was called to Sebastian County in December 1914 to make an examination of lease-holds and other material for the Bache-Denman Coal Company.

Q. What did you do? Describe the extent of that examination.

A. I went to the Prairie Creek Mines No. 3 and No. 4 first, and the mines at that time being burned down I was unable to get down in the shaft or slope of the mines.

Q. You mean you could not get down what?

A. No. 3 Slope, but I went into what is known as Goo Goo slope and made quite an examination there, measuring the coal and so forth.

Q. How far down did you go?

A. I cannot state the distance, but we went practically through the entire workings. It was not very extensive, but we went into the rooms and into the entries, as I remember practically all that they were working in the place.

Q. Did you go down far enough to be able to see the conformation and the coal measures?

A. Yes, we went down so there was no trace of any stain or loss of the character of the coal because of its being near the outcrop. We went down to Virgin coal.

Q. Did you examine that coal and measure it?

A. Yes.

3370 Q. Did you examine the quality of the coal?

A. Yes.

Q. Are you familiar with in a general way with the geological formation and coal measures in Arkansas? A. Yes.

Q. Did you examine the provisions of the leases for Prairie Creek No. 4 and Mammoth Vein No. 1? A. Yes, sir.

Q. Being Exhibits 105 and 107 as of Prairie Creek No. 4, and Exhibits 100 and 101 as to Mammoth Vein No. 1?

A. Yes. This is Mammoth Vein (indicating) Exhibit 101 and this is the Prairie Creek Lease (indicating exhibit 105).

Q. Is Exhibit No. 101 the supplemental Mammoth Vein lease?

A. Yes, it is the supplemental Mammoth Vein lease.

Q. Now, Mr. Eyster, from your experience as a mining engineer, and your knowledge of the coal measures in this country, and your general information and experience as to the subject matter, are you qualified, in your opinion, to give an opinion as to what was the reasonable value of the two leases to which you have just referred as of December 1914?

A. Yes.

Q. What, in your opinion, was the reasonable value, in December 1914, of the lease covering Prairie Creek No. 4, being Exhibits 105 and 107?

Mr. Warrum: The defendants separately object to the testimony sought to be elicited from the witness by this question on the grounds that the question itself requires the witness to construe a written instrument, and the witness has testified that he has never descended into any except the Goo Goo shaft and is not familiar with the workings of the leases to which his attention is now directed.

3371 The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

The Witness: Please repeat the question.

(Question read by stenographer.)

The Court: Do you mean leases or lease-holds?

Mr. Drinker: Lease-holds.

A. From $225,000.00 to $230,000.00.

By the Court:

Q. That is what? A. Prairie Creek No. 3 and No. 4.

By Mr. Drinker:

Q. What, in your opinion, was the reasonable value as of December 1914, of the leaseholds covered by leases Exhibits Nos. 100 and 101, the Mammoth Vein No. 1?

Mr. Warrum: To which the defendants separately object, —to the testimony sought to be elicited from this witness for the reasons given.

The Court: The same ruling.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. On the Mammoth Vein lease and the supplementary lease, I placed that between $195,000.00 and $210,000.00.

Mr. Drinker: You may cross examine.

Cross-Examination

By Mr. Covington:

Q. With what mine are you connected in Johnston County? A. When do you mean? At what time?

Q. Any time since you came to Arkansas from Pennsylvania. A. With what mine or mining company did you say?

Q. Either one.

3372 A. I have been connected with the Pennsylvania Mining Company at Fernwood and the Anthracite Coal & Mining Company.

Q. Is the Arkansas Anthracite Coal & Mining Company operating any mine down there? A. No.

Q. Is the Pennsylvania Mining Company? A. No, sir.

Q. Is the Fernwood operating,—you have been right there in one mine?

A. The Fernwood is operating in Arkansas now.

Q. You have been in that one mine ever since you came to this state, haven't you? A. Not in one mine.

Q. What other mines have you worked in?

A. The Fernwood Mining Company is working at one mine now, and opening another.

Q. They have sunk a shaft at the Fernwood mine?
A. Yes, at Montana.
Q. And the experience you have had has been confined to the Pennsylvania Mining Company's property?
A. No, sir.
Q. What other experience have you had?
A. As I said before, I have made examinations,—I have gone around to other different mines and made examinations of them and done the general work which a mining engineer would engage in along the line of his profession during the years I have been in Arkansas.
Q. Did you examine the mines to ascertain their earning powers? A. Which mines?
Q. The mines you say now you have been examining down there.
A. I have made examination of properties, one property especially. I took the,—the land had never been open-
3373 ed up and I made a long examination along a piece of work to decide what would be the operating cost and estimated the profits they could expect to make from it, whether it would be a profitable concern. I also made examination for one mine which is opened up, for the same reason. I have been around the other mines and the general run of the work, sometimes for examination and sometimes for trouble that would come up at the mines, some slight trouble which they would ask me to come in to look over, and for engineering work.
Q. Did you examine the mines for the purpose of ascertaining their earning power? A. Yes, I have done that.
Q. What mines did you examine for that purpose?
A. I examined for that purpose,—one mine I examined was the Scranton Anthracite Coal Company's mine.
Q. When was that?
A. I don't remember the date. I don't remember the exact date, but it was either in 1911 or 1912, I don't remember which.
Q. Is that mine located at Montana, Johnson County?
A. Yes.
Q. It has not been operated in five years, has it?
A. What is that?
Q. It has been shut down for six years, has it not?
A. No, not for six years. I think five years. It was in 1911 or 1912 that I made the examination.
Q. When did you first go to Prairie Creek and examine the properties you have testified about?
A. I went there in December,—a week before Christmas in December, 1914.

Q. Did anyone accompany you? A. Yes.
3374 Q. Who was it?
A. Mr. John Dailey and Mr. Denman.
Q. You say you went into what they Call Goo Goo?
A. Yes, that is one we went in.
Q. How far in Goo Goo did you go?
A. I testified before that I did not remember. I could not state how far that mine was worked in, but we went approximately to the face of all of the workings.
Q. How did you do that, when there was no ventilation in the mine?
A. There was ventilation in the mine.
Q. How? A. There was natural ventilation.
Q. By what subterranean cavern was the air conducted into Goo Goo?
A. There was no subterranean cavern to conduct the air into Goo Goo. As I remember it, it was,—I think there is down there a chimney constructed out of boiler plates to cause a natural draft, that is my recollection of it. I am not certain about that. I know there was ventilation; I think it followed the slope.
Q. Did Mr. Denman go in the mine with you? A. Yes.
Q. Did Mr. Dailey go in the mine with you? A. Yes.
Q. Is it not a fact that you could not go far into the mine but had to turn back on account of the black damp in the mine?
A. No, it is not a fact, because we had the fire boss with us and there was not a particle of it in that mine. We went around all through the mines with open lamps.
Q. What was the extent of the workings in Goo Goo? Give us an idea about that.
A. It was not a very extensive workings. There were a number of rooms turned off and the main entry had gone down until it was in the virgin coal. There was no
3375 sign of any water stain or any indications that the nearness to the outcrop had affected the coal in anyway at all. It was the virgin coal down there.
Q. Now, going to Mammoth Vein, you say you went down in that mine and examined it?
A. I did not say I went down in the Mammoth Vein.
Q. Well, did you?
A. I went down,—I went in a short distance. I crawled in far enough to measure the coal in that place.
Q. Had it plenty of ventilation? A. No.
Q. Was there any black damp?
A. I didn't go down far enough to see.
Q. How far did you go from the mouth of the slope?

A. Fifteen or twenty feet.

Q. That was the extent of your examination, and yet you say that probably is worth from $225,000.00 to $230,000.00.

A. I did not say that was the extent of my examination.

Q. What other examination did you make?

A. I went down the Hoffman mine and the nearest point I could get,—

Q. (Interrupting.) I am talking about Mammoth Vein.

A. The Mammoth Vein property, the only way you could get to judge that coal was to go to the nearest point where you could see the coal, the coal measures in that vicinity, and I did that.

Q. But you measured the coal in this particular mine you say

A. I did not say,—I said I measured right close at the mouth of the slope of Mammoth Vein, but I did not go down in that because it was not safe and we went to the nearest other point we could get to determine the character of the coal on that property.

3376 Q. How many acres of that lease are worked out?

A. I will have to refer to my notes; I cannot say offhand. There was remaining about 340 acres of that property.

Q. How do you know?

A. How do I know? By the examination of the mine maps.

Q. Where did you find them

A. Find the mine maps?

Q. Yes.

A. The mine maps that I took them off of were on exhibit in 1914 in the court here.

Q. On exhibit?

A. On exhibit in the court; and I also verified my figures inside of the last week.

Q. How many tons of coal remained unmined on that lease?

A. There is available for mining purposes, allowing enough coal for safe mining, and for the proper operation of the mine, generally, 2,500,000; in exact figures, 2,508,250 tons.

Q. How much has been mined out?

A. The original coal acreage underlaid with coal was 360 acres; that would be about 20 acres mined out.

Q. 20 acres mined out. How much would that approximate in tons?

A. You can say there was,—I am not very good at figures in my head, but I figured it about 7,000 tons to the acre;

slightly over that. I believe it is seven thousand three hundred and some odd tons to the acre that you can mine. You can say 7,000 tons to the acre.

Q. You did not get any closer to No. 4, I mean in the under ground workings of No. 4, that the mouth of this slope at Mammoth Vein?

A. In the No. 4 workings, I got on that land.

Q. On top of it?

A. No, sir, I got on the land, in the Goo Goo slope of No. 4 land.

Q. The Goo Goo slope is upon the side of the mountain, away from No. 4?

3377 A. It is in the same block of coal that you can call No. 4 land. I also went over to the strip pits, close to No. 4, and saw the coal there.

Q. That is on top of the ground?

A. It is all coal; it is out crop.

Q. You didnt go down in the mine, you know nothing about the workings?

A. I was not in the mine at all, because it was impossible to get in.

Q. And that is the extent of your examination, and upon that you place a valuation of $220,000.00?

A. That was the extent of the physical examination of the property.

Q. That is what you are basing your opinion, the physical examination?

A. There are other things besides that to be taken into consideration.

Q. When did you make the estimate that you have been testifying to?

A. I made the estimate i 1914; December, 1914. I made an estimate then, and I have made another estimate which verifies that estimate, in the last week.

Q. You did what? I didnt catch that?

A. I said that I made an estimate in 1914, in December, 1914. And I have made another estimate in the last week which verifies the estimate I made before.

Q. Does it correspond to the estimate that you made in 1914? A. Practically.

Q. It is some enlarged since then? A. Yes, slightly.

Q. How many dollars have you enlarged it?

A. I think it come to $15,000.00 on the two leases; that is the two leases together were enlarged between fifteen and twenty thousand dollars.

3378 Q. And that is fifteen to twenty thousand dollars on both? A. On both together.

Q. You have qualified as an expert mining engineer, and I want to ask you now, supposing you own leases on 2700 acres of coal land, and the vein was 6 to 8 feet thick, and it had been developed, and had mines four or five in number, with a producing capacity of from 500 to 1100 tons per day each, and had operated the same for several years, and had during the period of operation mined out approximately 400 acres of the 2700 acres; and that the property was managed by experienced, qualified mining engineers, and had paid no dividend, and had through the years the lease operated expended an average of $465,000.00 per year for labor, royalties, machinery and appliances; the entire sum realized from coal produced, and had during the years it operated accumulated an outstanding indebtedness resulting from such operation of more than four hundred thousand dollars, and at the end of the period did not have sufficient cash on hand to pay the minimum royalties required to protect the leases against forfeiture, what in your judgment would be the value of such leases?

A. Following the expenditures on the leases, they ought to be worth four hundred and fifty to five hundred thousand dollars.

Q. Leases that you had spent all that you had made on it for years, and about a half a million dollars in all, it would still be worth five hundred thousand to four hundred and fifty thousand dollars?

A. Yes, sir, with that development, it ought to be tremendously valuable.

Redirect Examination

By Mr. Drinker:

Q. Mr. Eister, from your knowledge of geology, in
3379 measures in that region, and from your general experience, were you enabled and do you know with reasonable certainty that the same coal measures which you actually saw from your examination of the Prairie Creek property at Goo Goo slope, where you went down, persists and continued throughout the length covered by that lease?

A. Yes, sir; the general character of the coal in the different places I was in, the character of the coal remained about the same. There was some slight difference in the [heighth], and some slight difference in the amount of bank rock, but the general character of the vein remained the same.

Q. And from your examination, as far as you went down in Mammoth Vein slope, and from your examination of coal measures, where you could get down in the mines in the im-

mediate vicinity, were you enabled to know that that same coal measure persisted throughout the Mammoth Vein lease?

A. Yes, sir.

Recross Examination

By Mr. Covington:

Q. Was it Mr. Branner who made the geological survey of this county and reported it,—is he an authority?

A. Mr. Branner.

Q. Yes, sir, Mr. Branner, now with the University of California?

A. I am not acquainted with Mr. Branner at all.

Q. You have never seen his work on this at all?

A. If I have, it has not been by that name.

Witness Excused.

3380 WALTER GILMAN, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your name? A. Walter Gilman.

Q. What is your business? A. Mining engineer.

Q. How old are you? A. 41 years old.

Q. With whom are you associated?

A. Associated with Edward V. d'Invilliers of Philadelphia, mining engineers and geologists.

Q. You are a graduate of what institution?

A. I have not had any college experience.

Q. How long have you been engaged in the engineering business?

A. Fifteen years, in mining engineering.

Q. And what is your specialty, and that of Mr. d'Invilliers?

A. Examining coal properties, and in practically all parts of the United States for the purpose of mortgages.

Q. Explain what you mean by for the purpose of mortgages?

A. When a coal company desires to obtain additional money, and wants to borrow money, they generally go to banking institutions in Philadelphia or New York or Boston, and the banking institutions will send us out to make an investigation of the property, and investigate the security for the loan.

Q. To find out whether the property is valuable enough to warrant the loan? A. Yes, sir.

Q. Now, will you state with some particularity the extent of your examination of properties throughout the United States, for what purpose, and the general magnitude of the transactions involved?

3381 The Court: That is coal properties.

Q. Coal properties; in order to show your experience in this connection.

A. I have examined the Pittsburgh-Westmoreland Coal Company properties for the Girard Trust Company.

Q. When? A. About ten years ago.

Q. And how large was that property?

A. The property?

Q. Yes.

A. About seven or eight thousand acres.

Q. And for what purpose did you examine it?

A. For a loan, a mortgage loan.

Q. And for whom?

A. For the Girard Trust Company.

Q. Did you make a report on that property?

A. I made a report on the property.

Q. And what was the amount of the transaction involved?

A. About five million,—

Mr. Warrum (interrupting): Wait just a minute, please. The defendants separately object to this question as a collateral matter, and does not intend to qualify the witness at all, the question not being as to the report that he made on that particularly property, or whether he made any report at all, and certainly the amount involved has nothing to do with it.

The Court: The court is of the opinion that it is a question of whether the matter involved a few hundred tons of a million dollars or so, goes to show the experience of the witness, and therefore the objection is overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. And what was the amount of the transaction involved?

3382 A. Five million dollars approximately.

Q. Was that a mortgage or sale? A. Mortgage.

Q. And was that mortgage actually issued? A. Yes, sir.

Mr. Warrum: The defendants desire to renew their objection.

The Court: Yes, sir, I think that is not material.

Mr. Drinker: We withdraw the question and strike out the answer.

Q. Go on; name some more?
A. The Keystone Coal & Coke Company.
Q. Where was that?
A. In the Greensburg district of Pennsylvania.
Q. When? A. That was about eight years ago.
Q. How large an acreage did you examine there?
A. I don't recall the acreage, but I imagine twelve or fifteen thousand acres.
Q. And what was the amount of that transaction?

Mr. Warrum: The defendants separately renew the same objection.

The Court: The same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. Ten million dollars.
Q. Name some others.
A. Queen Mahoning Coal Company, in the Somerset district of Pennsylvania.
Q. When? A. About five or six years ago.
Q. How many acres involved there?
A. I cannot just recall the acreage, but I think about 3,000.
3383 Q. And what was the amount of that transaction?
A. $900,000.00.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the court the defendants and each of them, then and there duly excepted and still except.

Q. Go on.
A. The Consolidated Coal Company properties.
Q. Where was that?
A. Pennsylvania and Maryland and Kentucky and West Virginia; that was a bond issue on that; that was forty million dollars.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. How many acres?
A. Oh, they must have had 150,000 acres in all those properties.
Q. Go on?
A. The de Bardeleben Coal Company of Alabama.
Q. When was that?
A. That has been about five years ago. Their acreage was not very large, and the bond issue was only about $6,000.00.
Q. $6,000.00? A. Six hundred thousand, rather.

Mr. Warrum: The same objection.

The Court: Same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Go ahead. A. And the Island Creek Coal Company.
Q. Where was that?
A. In West Virginia, Logan County, West Virginia, for the Hayden-Stone Company. They were the owners of the
3384 property, and that was not for a mortgage.
Q. What was that for?
A. Just merely an examination of the property to see what they could do with it in the future.
Q. That was not for valuation?
A. Yes, sir, for the purpose of appraisal, but not for a mortgage.
Q. And what was the extent of that?
A. I don't just remember exactly, but several million, however; it is a large property, several thousand acres.

Mr. Warrum: The defendants separately renew their same objection.

The Court: The same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Go on.
A. And the Latrobe-Connellsville Coal Company of Pittsburgh, Pennsylvania. I don't just recall the acreage, but it is large property, including seven or eight large mines, with coke ovens in operation.
Q. What was the purpose?

A. That was for mortgage purposes, made for the Sartin Company of Philadelphia, and for several million dollars.

Mr. Warrum: We don't wish to renew the objection each time, and be interrupting, but we would like that the court would consider that we are objecting to all this line of testimony.

The Court: Let the record show that you object to all of this, and the objection is overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

3385 A. (continuing) The Victor Record Coal Company properties in New Mexico and Colorado.

Q. When was that?

A. Several years ago; that was made for the Hayden-Stone Company.

Q. For mortgages?

A. Yes, sir, but I don't recall the amount, between one and two million dollars. I have examined the property recently in the Gallup field of New Mexico.

Q. Was that a coal property?

A. Yes, sir, examination for purpose.

Q. And what was the acreage approximately there?

A. Well, the acreage was quite large, I don't recall it; probably 20,000 acres.

Q. What was the amount of that transaction?

A. I think they were going to give three million dollars for the property, that was for the Ray Consolidated Copper Company and the Chino Consolidated Copper Company.

Q. Any more?

A. Yes, sir, if I could just think of them, a good many more. In Illinois, about a year ago, I examined the Old Ben Coal Corporation [proerties], which included the Old Ben Coal Company, the Christopher Coal Company and the United Coal Company properties. The three companies were united under the name of the Old Ben Coal Corporation, and that was an examination, I think, for a mortgage of about five million dollars. That is about all I can recall just now.

Q. Now, in connection with those examinations, what knowledge and experience is it necessary for you to have in order to fix these valuations in a general way? What was the general factors which enter into your judgment in that connection?

A. Location and railroad facilities, the quantity of coal and quality of coal, and availability for mining, and
3386 mining cost, and markets, and selling price and earnings.

Q. Did you make an examination,—are you familiar with the geological formation of the coal measures in the Arkansas field?

A. I have made an examination in the Arkansas field.

Q. Did you examine the property of the Bache-Denman Company?

A. I made an examination of the property of the Bache-Denman property in the latter part of July, 1914.

Q. When, do you remember, between what dates?

A. Between July 25th and August 1st.

Q. At whose request did you make that examination?

A. At the request of Mr. Bache.

Q. He was then Receiver of those companies?

A. Yes, sir.

Q. Had just been appointed? A. I think so.

Q. Now state with particularity the extent of your examination of those properties, and in so doing, you can go down and take the pointer and point out on that relief map where you went?

A. I will have to refer to the notes that I made at that time.

Q. You made those notes at the time of your examination?

A. Yes, sir; of course many of the mines were not accessible.

Q. Take the pointer and show with particularity just where you went, and tell what you did.

(The witness here proceeded to the relief map, and parts of his answers were inaudible to the reporter.)

A. I measured the coal in two places in Hoffman mine.

Q. Where?

A. The apex, and ..... feet down. In the Bull Moose mine I measured the coal in two places.

Q. Is that one of the mines of one of these companies?

A. No.

3387 Q. How far away is it from the Hoffman mine?

A. It is located just west of the Hoffman mine. And the Jackelette mine.

Q. Where is that? A. Near Mammoth Vein No. 1.

Q. How near?

A. It ought to be about like that (indicating), and then the Griffith slope, I measured the coal.

Q. Where is the Griffith slope, near Goo Goo plane?

A. Yes, sir.

Q. How far did you go down there? A. Not very far.

Q. Did you go far enough to be able to see the conformation of the coal measures? A. Oh, yes.

Q. Now, give a description to the court and jury of the measurements that you made in the coal at those places; with what particularity did you measure it; refreshing your memory from your notes?

A. Giving the exact figures of this, the Griffith mine, sandstone roof three feet, ten inches,—(the remainder of the answer was inaudible).

Q. Now, go on.

A. At the Jackelette mine, near the Coronado mine,—

Q. How near?

A. Just adjoining. The measurements I made there I measured the outcrop, solid coal forty-seven inches and there was slate and coal that I couldn't measure.

Q. Go on. A. That is the only place.

Q. Did you examine the strip pit on that property?

A. No, sir.

Q. Now, was your examination of the coal measures in the neighborhood of the Coronado, Prairie Creek No. 3 and 4 and the Mammoth Vein No. 1 mines sufficient to enable
3388 you, with your knowledge of the conformation of coal measures in the region, and your general knowledge of the situation, to enable you to give an opinion as to the value of those properties?

A. I think so. In addition to the information obtained at that time, the firm that I am connected with made a report in May, 1913, and I helped compile the report from the data obtained out here by the senior member of our firm.

Q. And that was supplemental to your personal investigation? A. Yes, sir.

Q. Did you make any maps at that time in connection with that investigation? A. Yes, sir.

Q. Which member of your firm had made that previous investigation? A. Edward V. d'Invilliers.

Q. Where is he now? A. In Philadelphia.

Q. Is he well? A. No.

Q. What is the matter with him?

A. He is quite sickly, in fact he is always sickly. At the present time he is troubled with his teeth.

Q. Now, did you make at that time an examination of the Boone leases, and Sebastian County leases, at Coronado, and the lease of the property at No. 4, and the lease of the property at No. 1? A. I didn't quite catch that.

Q. At that time did you make an examination of the leases covering the Coronado property?
A. You mean the leasehold or leases?
Q. The lease; did you see their provisions?
A. At the time of that examination?
Q. Yes. A. No, but I have recently.
Q. How recently have you examined all those leases that I have just mentioned? A. Within the last few days.
3389 Q. Have you also made an examination of the mine maps of those properties? A. I have.
Q. Now in view of all of the information that you have obtained, in the way that you have described, and also in other ways that you have not gone into particularly, do you feel qualified as an expert to give an opinion as to the value of these leaseholds, as of December, 1914? A. I do.
Q. What in your opinion was the reasonable value, as of December, 1914, of the leasehold at Coronado property, involved by the lease from the Sebastian Coal Company to the Coronado Coal Company, being plaintiffs' Exhibit 112, which I hand you to examine and testify from?

Mr. Warrum: Defendants separately object, because the witness has stated here that he had no personal knowledge of it.

The Court: I think sufficient grounds have been laid for the testimony of the witness upon values. The question of the weight to be given to the opinion, of course, always depends upon the foundation. I think the foundation is sufficient, however, that it may be considered, with a proper instruction which the court will give.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Q. Answer the question? A. What is the question?

(Question read by official stenographer.)

A. $47,000.00.
Q. What in your opinion was the reasonable value, as of December, 1914, of the leasehold covered by the lease from Boone and wife to the Prairie Creek Coal Company, as-
3390 signed to the Sebastian Coal Company, being plaintiffs' Exhibit 108, which I hand you?

The Court: What property does that cover?

Mr. Warrum: That is the same property, that is this lease from Boone to the Sebastian County Coal Company, and there was a sub-lease.

A. That is the same property, is it?

Q. Yes, but that is the original Boone lease, to the Sebastian County Coal Company.

A. I included that valuation for both of them, I didn't separate the values.

Q. I wish you would separate the values of the two, if you can,—no, let it go at that. Your opinion includes the value of the two leases together? A. Yes, sir.

Q. What in your opinion was the reasonable value of the leasehold covered by the lease from the Cherokee Construction Company to the Prairie Creek Coal Mining Company, on Prairie Creek Nos. 3 and 4, covered by leases, plaintiffs' Exhibits 105 and 107, which I hand you?

Mr. Warrum: The same objection, if the court please, to all of this.

The Court: Yes; objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. $255,000.00.

Q. What in your opinion is the reasonable value of the leasehold covered by lease from the American Smokeless Coal Company and Cherokee Construction Company to Mammoth Vein Coal Mining Company, being plaintiffs' Exhibits 100 and 101, which I hand you, such leasehold being the one at Mammoth Vein No. 1, as of December, 1914?

3391 Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

A. $215,000.00.

Mr. Drinker: You may cross examine.

Cross-Examination

By Mr. Covington:

Q. What is your business? A. Mining engineer.

Q. Where are you located? A. Philadelphia.

Q. What financial institutions are you connected with?

A. None.

Q. You have a firm of your own? A. Yes, sir.

Q. What time in 1913 did you send one of your firm out here to make a survey of these properties?

A. The report was made in May, 1913; I guess his visit was here just a couple of weeks previous to that.

Q. You say you got here on the 25th of July?
A. Yes, sir.
Q. 1914?
A. I was here between the 25th of July and August 1st, 1914.
Q. Did you come here on the 25th?
A. I think so, yes, sir.
Q. Where were you when you got word to come here?
A. Philadelphia.
Q. Who notified you? A. Mr. Bache.
Q. Mr. Bache? A. Yes, sir.
Q. By wire or letter?
A. I cannot recall just now, I think it was by letter.
Q. And you stated the extent of your examination of
3392 the property, and what was the value you placed on the Coronado? A. $47,000.00.
Q. $47,000.00? A. Yes, sir.
Q. And on mines Nos. 3 and 4, $255,000.00?
A. I placed a value of $255,000.00 on Prairie Creek.
Q. Who have you been examining properties for, what trust companies and banks and financial institutions?
A. I mentioned some of them here; The Girard Trust Company; Brown Bros. & Company of Philadelphia; the Fidelity Trust Company of Philadelphia; Hayden-Stone Company of New York; Lee-Higginson Company of Boston; Henry & West of Philadelphia; Graham Company of Baltimore; Trask & Company of Baltimore; and many others, I can't think of them.
Q. You just represented all of the East, all of the financial interests in the East?
A. The financial interests are mostly in the East. One company, however, was in Ohio, and one in Pittsburgh.
Q. You represented the financial interests, the Rockefeller and Morgan and other fellows?
A. No, sir, I don't represent any financial interests.
Q. Why do you reckon the report was made on this property in 1914?
A. I came out with the idea that I might be of some use in getting Mr. Bache financial assistance and rehabilitating these properties.
Q. You came out voluntarily?
A. No, sir; I was paid.
Q. Graham Brothers sent you down here, did they?
A. No, sir.
Q. Who did? A. Mr. Bache.

3393 Redirect Examination

By Mr. Drinker:

Q. Your object in coming here was to value the property in connection then with a possible loan by some person or institution in rehabilitating the property, after its destruction?

A. Not that exactly; but to get acquainted with the conditions here, and if Mr. Bache found someone, then I could talk to them as a disinterested party.

Witness excused.

3394 J. B. HILLING, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your full name? A. J. B. Hilling.

Q. What is your business?

A. In the mining business, operating mines.

Q. Where? A. Red Oak, Oklahoma.

Q. Are you familiar with the Bache-Denman properties down in Sebastian County? A. I am.

Q. Are you in any way interested in any of those companies? A. I am.

Q. Stockholder in one of them? A. I am.

Q. In which one? A. The Bache-Denman Coal Company.

Q. That is the parent company? A. Yes, sir.

Q. And what is the extent of your familiarity with those properties down there?

A. Well, I have a pretty broad knowledge of them, I was there for about three years.

Q. When?

A. The first of all I went there in 1903, and from 1903 until the latter part of 1904. Then I came back again in July 1907, and stayed until January 1st, 1910, in all about four years, or four and a half years of experience in that field.

Q. Are you familiar with other coal properties in Arkansas? A. I am.

Q. Generally to what extent?

A. In the Greenwood District I am familiar with the properties there, and all around the Hartford and Huntington field.

Q. Have you been down in the mines of the companies operating in the vicinity of the Sebastian County mines
3395 of the Bache-Denman Company? A. I have.

Q. Do you in a general way the conformation of the

coal measures and the availability of the coal in the different mines for mining? A. I do.

Q. Mr. Hilling, basing your opinion merely on the conformation of the coal measures, the depth of the veins, the quality of the coal, the availability of the markets, the railroad connections, and all those permanent and external features, independent of the equipment and the development of the mines, how do the properties held by the Bache-Denman Coal Companies in Sebastian County, either in fee or by leasehold, in July 1914, compare, as to value, with the other coal properties in the region in Arkansas, as to value?

The Court: What region? You said in "the region".

Mr. Drinker: In the general vicinity which would come directly in competition with the Sebastian County mines.

Mr. Warrum: The defendants object, because there is no proper foundation laid, and it calls upon the witness to make a comparison.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Q. Do you understand the question? A. Yes, sir.
Q. Answer the question.
A. In my opinion our properties were the best in the field.
Q. At that time?
A. At that time, yes, sir, or at least when I left the properties.

Mr. Drinker: You may cross examine.

3396 Cross-Examination

By Mr. Covington:
Q. Mr. Hilling, the property of the value of that, do you know why it was you could not get enough money on it to pay $400,000.00 royalty to keep the leases?
A. No, sir, I do not because I was not familiar with the financial end of it at all.

Mr. Covington: That is all.

Redirect Examination

By Mr. Drinker:
Q. What connection did you have with Mammoth Vein No. 1 Mine?
A. I was superintendent of it for four years.

Q. Did you open up Mammoth Vein No. 1 yourself?
A. I did, sir.
Q. Are you familiar,—you have had experience, have you with the operation of mines as a superintendent and practical operator? A. About 20 years.
Q. Now, Mr. Hilling, I will ask you if a coal mine that produces 500 tons of coal per day, working one man in a room, how many tons could that same mine produce if it worked two men in a room?

Mr. Warrum: The defendants separately object to the question because it leaves out elements that would be absolutely necessary for the witness to make an intelligent answer to the question.

The Court: On cross examination you can put in any element that you desire; I think that is sufficient to meet the requirement; objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

3397 Q. Did you understand the question?
A. Repeat it, please.

(Question read by official stenographer.)

A. I would say about 800 tons.
Q. Would that increase be attributable solely to the change of method from one man in a room to two men in a room?

Mr. Warrum: Object to that as calling for a conclusion.

The Court: He is giving the opinion as an expert, which is always admissable. Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly expected and still except.

A. It would.
Q. That increase would involve the employment of twice as many coal cutters would it? A. It would.
Q. Now, in view of that, would the increase, in your opinion of that tonnage, in spite of the employment of the additional men, cut the cost of mining the total production of that mine [perton]? A. It would.
Q. What, in your opinion, would be the extent of the reduction in the cost of mining, by reason of that additional change in the method of operation from one to two men in a room? A. Anywhere from 15 to 20 cents a ton.

Recross Examination

By Mr. Covington:

Q. How long have you operated a mine?

A. For myself?

Q. Yes, or for anyone else.

A. I have been superintendent of mines for about 17 years.

Q. Did you work two men in a room? A. Yes, sir.

Q. And operate your mine with union labor?

3398 A. Yes, sir, always.

Q. Still do it? A. Yes, sir.

Q. Where are your mines located?

A. In Red Oak, Lattimer County, Oklahoma.

Q. Anywhere near where these properties are located?

A. No, sir.

Q. About how near?

A. About forty miles east of the Kali-Inla property.

Q. The method and manner of mining is of course regulated by the character of the mine? A. Yes, sir.

(Witness excused.)

3399 H. O. LEWIS, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your name? A. H. O. Lewis.

Q. What is your business? A. Mining engineer.

Q. How long have you been engaged in that profession?

A. About almost, oh, most of the time since 1898; I held a couple of positions as superintendent in the meantime.

Q. Have you also engaged in the practical operation of coal mines? A. I have been a superintendent.

Q. Did you ever open up one?

A. As an engineer I have.

Q. Where?

A. That is, I done engineering work here in Arkansas.

Q. Have you done engineering work for the Bache-Denman Company? A. Yes, sir.

Q. To what extent?

A. I did all their surveying, and most of the plans for construction, and so forth, I made them.

Q. You didn't have anything to do with the purchase of materials, and things of that kind? A. No.

Q. Have you been through either one of those Bache-Denman mines? A. Yes, sir.

Q. From one end to the other? A. Yes, sir.
Q. And made the surveys? A. Yes, sir.
Q. And the mine maps? A. Yes, sir.
Q. Have you been through any other properties, coal properties in the vicinity of those mines, and if so, to what extent?
A. I have been through nearly all of them.
3400 Q. Within what radius?
A. Mostly all over the state.
Q. What?
A. Pretty near all over the state; and eastern Oklahoma.
Q. In what capacity?
A. Engineer, and making reports.
Q. Did you ever make any reports on valuation?
A. Yes, sir. Well, I won't say on valuation, I have as an operating report.
Q. You mean on cost operation? A. Yes, sir.
Q. But not the valuation of the properties?
A. I don't know that it took in that specific feature, the report I have in mind.
Q. Now, Mr. Lewis, from your knowledge of these Bache-Denman properties, and your knowledge of the [propertiexs] in the vicinity, excluding from consideration the improvements, tipples, and other facilities, and the development work, but directing your attention to the permanent features, such as the conformation of the coal measures, the thickness of the vein, the quality of the coal, the availability of the market, the railroad connection, and such permanent features, how in your opinion, do the Bache-Denman properties compare as to value with the other coal properties in Arkansas?

Mr. Warrum: The defendants separately renew their objection for the reasons heretofore given, and for the reason that the witness has stated that he had no experience in valuing mines.

The Court: Objection overruled; the witness has not disqualified himself at all, except that he has not been employed to value mines, but he has been employed as an engineer, and he ought to be able to give the comparative status of the coal in this mine with other mines.

3401 To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Q. You understand the question, Mr. Lewis?
A. Yes, sir.
Q. Answer it, please.

A. I consider that the amount of territory they had to develop, and the physical condition of the mines in regard to the coal and the thickness, and their physical condition, that they were good, or fully as good, if not better, than most mines I have been in in the field.

Mr. Drinker: You may cross-examine,—did you finish your answer?

A. I was going to say that I cannot recall of any mines that I have been in that I consider a better property than the Bache-Denman property, as a whole.

Mr. Drinker: You may cross-examine.

Mr. Covington: No questions.

(Witness excused.)

3402 C. H. FINLEY, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your name? A. C. H. Finley.

Q. Are you one of the receivers of these companies?

A. Yes, sir.

Q. When were you appointed receiver?

A. About the 5th of October last year.

Q. What was your position before the 25th of July, 1914?

A. I was Vice President and Auditor of the Bache-Denman companies.

Q. Did you occupy any position in the subsidiary companies? A. Yes, sir.

Q. What?

A. I was Vice President of the most of them.

Q. Were you familiar with all their transactions?

A. Yes, sir.

Q. You had nothing to do with the mining business of the companies? A. No, not much.

Q. Have you been down to the properties? A. Yes.

Q. Were you familiar with the properties? A. Yes.

Q. And with equipment on the properties?

A. Yes, sir.

Q. How often would you say that you visited the properties during the year prior to April, 1914, in a general way how often?

A. Well, I spent about a half of my time around the mines and the other half in the office.

Q. You had an office down there, did you?
A. Yes, I had an office at each mine.
3403 Q. Did you have anything to do with the [acquisting] of the machinery, etc., in connection with the development and equipment of the mines? A. No, sir.
Q. What do you mean by that?
A. I mean I did not have anything to do with the purchase of it. Of course all of the bills covering payments for it went through my hands.
Q. Now, Mr. Finley, when was the last time before July 17th, 1914, that you were down there?
A. I was there on the 16th.
Q. How long before that were you there?
A. I was there almost every day during the months of June and July up to the 16th.
Q. Down in and around the mines?
A. Not inside, but around the surface part of them.
Q. All of the properties? A. No, No. 4.
Q. When was the last time you were at No. 1?
A. Inside of the mine?
Q. No, at the property?
A. Well, I was there in either the latter part of March or the early part of April.
Q. And at Coronado? A. About the same time.
Q. Now, Mr. Finley, are you familiar with the equipment that there was at the Prairie Creek No. 4, Mammoth Vein No. 1 and Coronado? A. Yes, sir.
Q. Before the destruction of those properties?
A. Yes, sir.
Q. Which property is it that is shown on this picture marked Exhibit No. 70?
A. This is the Midland Valley tipple at Mammoth Vein Mine No. 1.
Q. Which property is shown on Exhibit No. 75?
3404 A. That is Prairie Creek Mine No. 4 plant.
Q. Which property is it that is shown on Exhibit No. 69?
A. That is the Coronado Coal Company plant.
Q. And which property is it that is shown on Exhibit No. 74?
A. That is the Rock Island tipple at Mammoth Vein Mine No. 1.
Q. Now, Mr. Finley, I wish you would state what the equipment of Prairie Creek Nos. 3 and 4, and that general mine, consisted of previous to the destruction of the property? A. Well, they had a tipple.

Q. What condition was that in?

A. It was a new tipple. It had just been built less than a year, or about a year, and had a new shaker screen with shaker engine and they had a hoisting engine there, a first motion engine, and they had a blacksmith shop, more completely equipped than any other shop at the other mines. They had in it a pipe threading machine and a power drill, or something of the kind, and all of the necessary mine equipment to handle 800 to 1000 tons of coal a day.

Q. Do you remember what kind of boiler they had?

A. They had high pressure boilers.

Q. Do you know how large they were?

A. I think they were 125 horse power boilers, 125 or 150 horse power, I do not remember which?

Q. How many engines were there there?

A. There was one hoisting engine and one shaker engine and one rock hoisting engine at No. 4 shaft, and there was a hoisting engine at the Goo Goo plane and a hoisting engine at No. 3 slope.

Q. Was there an air compressor there? A. No, sir.

Q. No air compressor at No. 4? A. No, sir.

3405 Q. Was there any mine machinery there?

A. Yes, there was a Sullivan mine machine inside the mine and electric wires running down inside the mine to take power to it.

Q. Do you know of your own knowledge how much it cost to pump out Prairie Creek No. 4 between April 6th, 1914, and July 1917?

A. My recollection is it was between fifteen thousand and twenty thousand dollars somewhere.

Q. Now, turning to Mammoth Vein No. 1,—describe what equipment there was there at that time?

A. Well, there was, in addition to the tipple, a first motion hoisting engine and three boilers at the Midland Valley tipple. Railroad track scales, two fans, and two air compressors and a shaker engine, another engine on the tipple to let the loads down to the Rock Island tipple and pull the [emptires] back. A little engine to haul boiler fuel up to the boilers, and air receiver and various mine equipment.

Q. What was there at the Rock Island tipple?

A. There was a boiler house and engine room there. They had what we called an endless rope engine to handle the railroad cars up to the tipple.

Q. Did you have any pit cars there?

A. Yes, sir, the mine was fully equiped with pit cars.

Q. Do you know how many there was there?

A. No, sir, I do not know how many.

Q. What fans were there?

A. There were two fans there, one on each side of the main slope. There were two air courses there and they had a fan on each side.

Q. Did you describe the equipment in the Rock Island tipple?

A. I described the engine and boiler room there.

3406 Q. Now, coming to Coronado, what equipment was there there?

A. There was the usual tipple and a first motion hoisting engine, an air compressor, five boilers; then there was a plane engine that hauled coal inside of the mine through a drill hole, a rope went down the drill hole and pulled the coal up from the drip there, and another engine at the head of the plane to let the coal down the shaft, and in addition to that there was a coal washer at Coronado.

Q. How large was that, what capacity?

A. I do not know the capacity of it, but I recall that it cost something like $15,000.00.

Q. What else was there there?

A. A rock engine to handle the rock out of the mine. There was an air compressor. I believe I mentioned that before.

Q. Were there any pit cars?

A. Yes, sir, the mine was fully equipped with pit cars.

Q. How many shafts were there at that mine?

A. There was a hoisting shaft and an air shaft, two altogether.

Q. Any track scales?

A. Yes, railroad track scales.

Q. Did you mention whether there was any track scales at No. 3 and No. 1?

A. There were track scales at No. 4 and two track scales at No. 1, one of the Midland Valley and one on the Rock Island.

Q. Was there any equipment and [paraphenalia] connected with those three mines that you have not mentioned?

A. No doubt there was. I could not recall it all offhand.

Q. You have not attempted to specify everything there?

A. No, sir.

Q. Mr. Finley, do you know how much salary Mr. Bache had been receiving prior to April, 1914, from the com-

3407 panies in this group?

A. He was getting $10,000.00 a year for the last probably two or three years before the receivership. Prior to that he was getting $6,000.00.

Q. For how long?

A. Well, since 1907, at least; and I think he got less than that back of 1907. I have not looked that up.

Q. What company paid that?

A. It was distributed to the various companies he was managing in proportion to what we considered a fair distribution on tonnage basis.

Q. What proportion of it was paid by the Kali Inla Coal Company?

A. Well, in 1914 I believe the distribution was one-fifth to Kali Inla and the other four-fifths,—well, there was one-fifth to Kali Inla, one-fifth to Mammoth Vein Coal Company, one-fifth to Prairie Creek Coal Company.

Q. Coal Mining Company, you mean?

A. Yes, Prairie Creek Coal Mining Company. The remainder of it was distributed around to the smaller companies. I do not recall just how; one-fifth to Coronado. That is it. And one-fifth to the Hartford Coal Company and one-fifth to the Bache & Denman Coal Company, an Oklahoma corporation.

Q. What was the amount of the salary paid to Mr. Bache during the two years prior to 1914 by the group of companies represented by you, as plaintiffs in this case?

A. Well, I would have to figure it up before I could tell. I cannot do that in my head very easily.

Q. At the period when you said Mr. Bache was getting $6,000.00 a year, what proportion of that, if you know, was paid by these plaintiff companies, and what proportion by companies not parties to this suit?

A. My recollection is that at that time the Kali Inla
3408 Coal Company was paying one-half and the Arkansas companies one-half.

Q. For how long did that persist?

A. Well, it seems to me like three or four years.

Q. When did you say the $6,000.00 salary began?

A. It was $6,000.00 when I began keeping the books in 1907.

Q. You stated before that it was less; do you know when that was?

A. That was when the companies first started back in 1903 or 1904 sometime. I only know that from having seen it on the books after I took charge of them.

Q. I hand you a paper, Mr. Finley, which has been marked plaintiffs' Exhibit 39, and ask you whether you know what that is? It has not yet been offered in evidence.

A. That is a copy of a notice that was prepared requesting occupants to vacate company houses they were living in during the month of May, 1914.

Q. Do you know whether the originals of that were delivered to any tenants, [or] your own knowledge?

A. I did not deliver any personally, no.

Mr. Drinker: You may cross-examine.

Mr. Covington: No cross-examination.

Witness Excused.

Mr. Warrum: If the court please, I think if we can call Mr. Finley after dinner and ask him to identify some books produced, it will save time.

The Court. Very well.

Mr. Drinker: You can have Mr. Finley whenever you want him.

3409 FRANKLIN BACHE, recalled as a witness in behalf of the plaintiffs, having been previously sworn, testified further as follows:

Redirect Examination

By Mr. Drinker:

Q. Mr. Bache, do you know what the reason was that the insurance money collected on Prairie Creek No. 4 was not applied to the payment of the royalties? A. Yes.

Q. What was it?

A. Put the question again if you will. You put the wrong question. Do you mean Coronado? You said Prairie Creek, you mean Coronado, I think.

Q. Do you know what, if any, the reason was that the insurance money collected on the Coronado property was not applied to the payment of the royalties?

A. Because the holder of the mortgage had a provision in the mortgage that the company should be kept insured and in case of any loss the insurance should be applied to a reduction of the mortgage, and the people holding the mortgage also held the insurance policies and collected the money.

Q. And you never got that money?

A. No, sir, we did not get the money. It was paid to the bondholders.

Q. Who paid the premiums on that insurance policy?

A. We paid the premiums on that insurance policy, and all others.

Q. Did you have any insurance on Prairie Creek? A. Yes.

Q. Who paid the premiums on that?

A. The Prairie Creek Coal Mining Company. May I explain?

Q. Certainly, go on.

A. The Prairie Creek Coal Mining Company, under the
3410 terms of the lease from the Midland Valley Railroad,—
I mean the Cherokee Construction Company, agreed to keep the property insured in favor of the owner of the land, but we had to pay the premiums on the insurance.

Q. How much insurance was collected on all of the property of Prairie Creek, all [togehter].

A. I do not think any has ever been collected. It would be collected by the Cherokee Construction Company and not by us [anway]. I understand they have not collected anything.

Q. I hand you a paper which has been marked Plaintiffs Exhibit No. 159 and ask you to state what that is.

A. That is a contract between the Bache-Denman Coal Company and the Chicago, Rock Island & Pacific Railway Company. It also includes a bond made by the Maryland Casualty Company that secures it. Do you want the date?

Q. Yes. A. The 21st day of March, 1911.

Q. Did the Bache-Denman Company suffer any damage or loss on account of the destruction of the properties the subject matter of this suit, in connection with that contract?

A. It did.

Q. Will you explain to the Court and jury what that damage was and the nature and reason of it?

A. State that last question, please.

Q. State to the Court and jury what damage or loss was and the nature and reason for it.

A. In order to get the Mammoth Vein Mine facilities to ship over more than one railroad, it was,—it was already shipping coal over the Midland Valley Railroad,—in 1911, or possibly in the latter part of 1910, we decided we would endeavor to get the Rock Island Railroad, which was about a mile
and a half away from this mine, to build a spur track
3411 into it, intending to put up an additional tipple, which
we afterwards did., so that in case cars were short on one road we could turn around and ship coal over the other road. And also, and very largely because we wanted to participate in the orders for coal given by the Rock Island Railroad for its own use for its own locomotives, and which the Rock Island Railroad would not give to any mines not located on its own tracks. The Rock Island finally agreed to build

the spur in, and they insisted that we agree, on behalf of the Mammoth Vein Coal Company, I think it was, that the Bache-Denman Coal Company should agree on behalf of the Mammoth Vein Coal Company, that a certain tonnage every year should be shipped out over the track, and later on the Rock Island Railroad asserted a claim against the Bache-Denman Coal Company by reason of the failure of the Mammoth Vein Coal Company to put out sufficient coal over this track to comply with the agreement, and that claim amounts to,—I cannot tell you without reference to the books, but several thousand dollars.

Q. Will you look that up and be able to testify about it at the afternoon session? A. Yes.

Q. Now, Mr. Bache, when was the last time before July 1917 that you were down at the mine?

A. July 17th, 1914?

Q. Yes. A. I was there two or three times between July 1st and July 10th. I do not recall the exact dates.

Q. You were very familiar with all these properties and their equipment above and below ground, were you?

A. Yes, I was and am familiar with it.

Q. I wish you would describe to the Court and jury the
3412 property known as Mammoth Vein No. 1, with the mine equipment, development and everything connected with it, and in so doing you may refer to these pictures of them.

A. Well, that picture you have there—

Mr. Drinker: Being Plaintiffs Exhibit No. 70.

A. (Continuing)—is a photograph of Mammoth Vein Mine No. 1 tipple on the Midland Valley Railroad. There were two tipples to that mine.

Q. Describe Exhibit No. 74.

A. That is the tipple we built on the Rock Island spur which I have just spoken in connection with the Mammoth Vein Mine.

Q. Now, take one at a time and go through them and describe what equipment there was there and what it consisted of.

A. Well, as can be seen at the Midland Valley Tipple, there was a tipple out there (indicating) is one of the two fan houses. May I get up and point it out on the map?

Q. Certainly.

The Court: Take it back where the jury can see it.

(Witness goes to the back part of the jury box and answers by referring to different points on the picture, a part of his answers being inaudible to the reporter.)

A. The mouth of the slope is right down there (indicating) where the coal comes to the ground and the coal is pulled up this incline up to the tipple, and then it was dropped down by gravity past the switch out here (indicating) inside of this place was the shaker screen over which the coal was screened and in part of that house were the scales on which the coal was weighed. We had two sets of scales, one to weigh the coal in the mine cars and another to weigh the coal after it was put into the railroad cars.

3413 Inside of this building were three boilers, two 150 horse power and the other about 100 horse power, and where you see the steam was the engine house and inside of the engine house was the first motion hoisting engine 18x36 with a six foot drum and about three thousand feet of ¾ inch wire rope. In the engine house there were two air compressors, one large one with 1150 feet air capacity and one smaller one (cannot hear the witness at this point). Back under the stacks shown here were the boilers with three water pumps. We had steam traps and a small engine to pull the slack coal up to the tipple with which to run the boilers.

Here was a blacksmith shop containing forges, drills and the necessary equipment for a blacksmith shop. Here was the supply house (indicating).

At the Midland Mine we had two fans and two fan houses and two shafts. These fans were located back here (indicating) one fan was a 16-foot fan and the other a 10-foot fan. That is about all a list of that tipple there although I have not mentioned the pipe fittings and the cost of putting the engines on their foundations and setting the boilers and all that.

Q. What is this property shown in Exhibit No. 74?

A. The tipple on the Rock Island Railroad. That tipple was located about 1000 to 1200 feet southwest of the mouth of that slope and we constructed a tramway from the tipple I have just shown you over to this place, and let the cars down by gravity on a slight grade, with a wire rope fastened to an engine which I forgot to mention (cannot hear witness at this point). This was to haul the cars up to the tipple and let the empty cars back.

Now, this is the Rock Island track here (indicating);
3414 you can see four tracks. On account of the nature of the ground it was impossible to put those tracks so

they would be on sufficient grade for the cars to run, and you see here in this picture a rope which ran continuously. It ran to the shaft down here 1000 feet, and when we wanted to move the cars we did it with this rope fastening it to the cars. We had an endless rope engine in that house, as well as the boilers. (Could not hear witness at this point.) We had a water supply system and the water was carried a distance of about 6000 feet.

Q. Now, Mr. Bache, take the stand again and describe the development connected with the mine, Mammoth Vein No. 1.

A. Underground we had a slope mine. We had driven down about 2000 to 2400 feet of slope, which went straight down the dip of the coal from the tipple. It went on down for that distance, and that slope had an air course practically on both sides of it, two air courses. The air course goes with the slope, because you have to have the ventilation, one way to go down and one way to come out. Entries were driven out at intervals from 250 to 350 feet on both sides of this slope as far as they may have been driven. I cannot testify positively as to that without the mine maps which will show that.

The mine was equipped inside—all of the entries and the slopes,—with 25 pound per yard rails in the slope and 10 pound per yard rails in the entries. And the mine was also equipped with a sufficient number of cars to take care of its production which, in 1914, was approximately 500 tons a day. We had pumps inside of the mine to take care of the water which was pumped out of the mine through the drill hole. I think at different times through two or three drill holes. On the inside of the mine was a hoisting engine which we
3415 used to work what we called the plane in one part of the mine, I think I stated the pumps inside of the mine.

Q. At Prairie Creek No. 4 I wish you would take Exhibit No. 75 and go over that and describe it as you have Mammoth Vein No. 1.

(Witness now goes to the back end of the jury box and answers making reference to the exhibit in question.)

A. That mine was developed with a shaft 280 feet deep from the top of the ground to the bottom. The tipple is directly over the shaft. It was built in 1913 out of white pine which lasts a long time. On top up here where the sheave wheels and the rope went from the engine and went over those sheave wheels with which to pull the cages up out of the mine. The coal was not dumped directly on the cars but was put in self dumping cages and the cages were tipped over and the coal was dumped out into weighing pans where we had scales so

that the miners would know how much coal they loaded in each car and how much they were to be paid for. After the coal passed over the weighing pans it went on to the shaker screen. That was a perforated screen with holes in it which the coal passed over and that which passed over it was the lump coal and that would go on to one track and the slack coal would go on to another track. If we wanted to ship mine run coal which is all of the coal together, we would cover up the holes in the shaker screens and that mine run coal would be loaded on another track. (At this point could not hear witness.)

In this house here we had a little engine which we called the rock engine. And located right here, but outside of the picture, we had what we called a box car loader, a device by which, if we had box cars and we did not have this contrivance, the men would have to go into the cars and shovel the coal by hand into the ends of the cars, but when this
3416 contrivance was put inside of a box car the coal would fall on it and it would be carried to the ends of the box cars.

Back here was the boiler house. In there I think we had four boilers and they had the regular and necessary steam pipes and connections from one boiler to another, safety valves and all of the necessary equipment that goes with the boilers. And about a year before that we put in a blower system device so as to burn as much coal under the boilers as possible, and much more than could be turned without them. We dug a trench under the boiler and put it there to blow air into the boilers In the boiler house were the boilers with steam pumps, steam traps and so forth.

Back here, not shown, was the engine house where we had a first motion engine 18 inches by 36, double cyclinder with a drum of six or eight feet in diameter which hoisted the coal up from the bottom of the shaft.

Away from the engine house over here, but not shown here because of this building which is in the way of view of that was the blacksmith shop with a drill press in it, and a pipe cutting machine and a pipe threading machine and the necessary equipment of a blacksmith shop. And back here (indicating) was the supply house in which was kept the supplies for the mine. Down here were the track scales where we weighed the cars of coal when loaded into railroad cars. That is about all.

Q. Point out those places on the relief map.

(Witness does so but could not hear his description of the various points.) * * * * I cannot begin to enumerate everything around the mines in detail.

The Court: At this point we will stand adjourned for the noon recess until 2:00 o'clock P. M.

3417 Friday, Nov. 9th, 1917, 2:00 O'clock, p. m.

Pursuant to adjournment, court reconvened, the parties appearing as before, and the following proceedings were had:

FRANKLIN BACHE resumed the stand on direct examination.

By Mr. Drinker:

Q. Mr. Bache, you were about to begin a description of the underground workings at Prairie Creek?

A. Prairie Creek was developed by two slopes and one shaft; one slope went from the outcrop of the coal to Goo Goo Eyes down to the shaft at Mine No. 4, or rather, about 300 feet to the north of the shaft. But the second slope from No. 3 driven down in this coal seam to a level of the shaft, and about 3,000 feet away from the shaft. In addition to the slopes were the slope air courses, driven parallel with the slopes, and the entries in the main, which are driven off of the slopes, and from the entries the rooms or working places. Each entry, in addition to the entry proper, had an entry air course. Each slope had its air course, and the connection between No. 3 mine and No. 4 mine had its air course, as well as the main hallway.

The development work in No. 4 mine, and when I say No. 4 I refer to No. 3 and No. 4, because we generally called it No. 4, was driven well in advance of the rooms in a number of entries. In this mine, and all of those mines, entries were driven in advance of the rooms, and many rooms in each mine were not worked out. In 1914 there were about 180 rooms, or working places, in No. 4 mine, including No. 3, and when we took it over there were about 40. In other words, we increased the number of working places from 40 to 180, amounting to 140 working places. In every entry and slope we laid steel rails; the mine was equip-
3418 ped with a large number of mine cars holding about two tons of coal each; equipped with pumps and the shaft was equipped with the necessary pipes to take the steam to the pumps and to take the water away from the pumps at the top of the shaft.

Q. Now, take Coronado, and I show you the pictures, and describe that.

(The witness here left the witness stand.)

A. This exhibit here is 3 and 4 mine; here is the shaft.
Q. How far away did you say Coronado was?
A. Three or four miles, nearly four miles.
Q. In which direction? A. Northeasterly direction.
Q. Point out on the relief map which direction?
A. This way (indicating).
Q. Which road would you take to go to it?
A. You could take either one or two roads running out this way here, or returning that way (indicating).
Q. Where would Coronado be on that map if it were extended, to the left or above it or below it?
A. It would be pretty close to the right, out at the right of it.
Q. Now, go on with the description.
A. This shaft here is 130 feet deep. The coal outcrop is way back here on the hillside. The shaft,—in sinking the shaft we encountered an exceedingly hard sandstone rock, and the shaft was exceedingly expensive to sink on that account. The shaft is equipped, or the mine is equipped with what is known as a tipple over the shaft this way, and there is the weigh pan and mine scales there, on which we weigh the coal; and then it went down over those shaker screens. They are shown here, and the lump coal
3419 went out on this lump track, and the slack coal into the cars on that track (indicating). But this mine had one difference from the other one, that we put in a coal washer, and this is the coal washer to the left. We use that coal washer to wash the impurities out of the coal. The smaller size coal, the slack coal from the nut coal. The slack coal is washed also, and not just the slack as it comes from the mine. It was dropped into a hole in the ground that we call the loop. The elevator is contained in that large shaft. It picked up this slack coal from the loop and dumped it into a screen. There are three different sizes of slack, and there are three boxes that it goes in, and it is separated according to the impurities. The lighter coal went up over the top of those boxes, and into the bin, and then it came down here and we took the coal out and it went into the railroad cars. That washer was equipped with an engine to give it power to run the washer, and all of the necessary power to run the washer. (Unable to hear part of the witness' remarks.) This mine had three loading tracks. We have off here one that is called the track that we take the

cars up, above, without interfering with the operation of the mine. Now, back of this we have a boiler house, and there is the machinery that runs all of the machinery in the mine, except inside of the mine we had an electric hoist and pump. And we get our electric current from Huntington, and we take the current from over here and it goes down into the shaft into the electrical apparatus. Here are the boiler house and pumps and engines. Next to the boiler house is the engine house, and in this engine house we had (could not hear the witness).

3420 The engine was set on a stone and concrete foundation, and under the engine house was an air compressor, which we used for supplying the power to run the hoisting engine. Now, this hoisting engine which is not shown here, but it is located about 1200 feet, more or less, about 1400 feet in this direction, it ran the loaded cars down to the bottom of the shaft. (Could not understand the witness.)

This house up here that don't show in this picture contained the gear engine which operated the slope, or this plane. And up near there there was an 80 foot shaft used for an air shaft. You have to have an air shaft in all mines. That shaft was an 80 foot shaft, parallel with the main shaft. And up here was the fan house, and the engine and fan, and here is the rock track that we take care of the cars of rock. Then right about the engine house there is another track (could not understand the witness).

Then, as I pointed out, we had this storage house and the pumps to pump the water to the boilers, and we had the pumps to pump the water from the shaft bottom and then pumps in the mine, below the shaft bottom, to pump the water up to the shaft bottom; and then we had the steam line going around the shaft, and the water line coming back; and inside of the mine there was a slope and entries and mine cars and electric wiring and this electric pump. I forgot to mention that there was a blacksmith shop over here, the usual equipment, and we had a 25 horse power electric motor in there, but it was not in use. Alongside of that was a storehouse where we kept the mine supplies.

On this track was the track scales, 100 ton track scales for railroad cars. That in general is an outline, without going into particular details.

(The witness returned to the witness stand.)

3421 Q. Describe the development in Coronado.
A. The development in Coronado consisted of a

plane which took, or went to the working, and through which the coal was dropped to the shaft, through which the coal was dropped to the shaft which came out the working places, above the level of the shaft. And equipped with the slope, which takes out coal in the workings below the shaft level, and this [lope] and plane,— oh, and then on the east side of the mine there was a little separate slope, that went down, about, several hundred feet, seven or eight hundred feet, to take out a particular track to the land which was situated so it had to have a separate slope for it; and these slopes, except the little one that I speak of, had entries going off of them throughout the mine, to turn working places for the miners to take out the coal.

Q. Now, Mr. Bache, I wish you would state to the court and jury what features there were connected with those properties which made them of peculiar value, outside of the physical properties and development that you have mentioned?

A. The three mines which I have described, Mammoth Vein mine, the Prairie Creek Mine No. 4 and the Coronado mine, were located on three different lines of railroad. The Mammoth Vein mine was located on both the Rock Island the Midland Valley. The Prairie Creek mine was located on the Midland Valley. The Coronado was located on the St. Louis & San Francisco, that is the Frisco. The fact that we had connections with three different railroads was an advantage to us in the way of enabling us to reach certain markets from one mine which we might be excluded from by reason of freight rates, or lack of freight rates from another mine, and the fact that we had one mine on two
3422 railroads, the Mammoth Vein, gave that mine or should have given that mine a better car supply than if it had been dependent upon the cars furnished by one railroad.

The coal in these mines was what is known as low volatile coal. Low volatile coal is a coal which has two properties, which are important and valuable. On of them is that it is almost smokeless. The smoke that you see coming from coal is the volatile matter, and the low volatile coal makes less smoke. And the other quality that it has is that it makes more heat per ton than the high volatile coals. Now, in the United States there is very little low volatile coal. In West Virginia, in the Pocahontas field, and New River field, there is low volatile coal, and some in Pennsylvania in the neighborhood of Johnstown and South Fork, Pennyslvania, and a little of it in the state of Virginia, across the line from West Virginia. I do not know of any other volatile coals, low volatile coals until coming west, until you get to the

state of Arkansas. Now, the low volatile coal fields in Arkansas are very limited. There is very little acreage of coal of workable thickness that is not in the possession or controlled by large companies. In 1914 I doubt if it would have been possible to buy 500 acres of this low volatile coal of good workable thickness anywhere in Arkansas, particularly in Sebastian County. The coal in these mines, which we owned, was particularly thick. The seams were as thick, or thicker, than any in the field. They were at that time only three or four mines besides our own which had coal approaching the thickness of the coal in our mines.

Q. What advantage is there in a thick vein?

A. A much larger output per acre, in economy in yard-
3423 age because for each working place which is developed you have to drive and pay for so many yards of narrow work, or development work, and the larger the vein the more coal which can be gotten out of anyone working place. Consequently the development is less per ton, not per yard, but less per ton of the coal to be recovered. There is another advantage, and that is that you can use larger mine cars. In thick veins, than you can in thinner veins, and this reduces the cost of haulage. Another advantage of having a mine car is that every time you hoist a car up your shaft, you get say 50 per cent more, or even twice as much more coal through one hoist than you would if you had a smaller mine car, which you would have to have for a thinner vein.

Q. How about the pitch of the vein?

A. The pitch of the vein in those mines was low. In Coronado mine it was particularly low, and when I say the pitch being low, I mean the veins were comparatively flat, but there is no such thing as a flat vein in this country. In the Mammoth Vein or Prairie Creek mines the pitch was about 12 degrees.

Q. Indicate with that pointer about what 12 degrees would be?

A. (About that way indicated). That would be 45 degrees down there, and about 12 up here.

Q. Why is that an advantage?

A. The less the pitch the easier it is to haul the cars up into the working places. The company uses its own mules and drivers who are paid by the day to haul the empties up, and they deliver the empty cars to the miners at the face of the room, and the flatter the pitch the easier it is on the mules to haul it up.

3424 Another important feature I might have mentioned, and that is that in a thick coal mine, driving narrow work you dont have so much rock to take down in the entry,

in order to make head room for the mules. In a mine where the vein is only three feet thick, a mule cannot get through it, if you only take out the coal, and therefore you have to take out a certain number of feet of rock, and we generally figure on four and a half feet for the ordinary mule, and that's not much of a mule at that, but in these thick veins you can put in any sized mule, and consequently a good sized mule can haul more than a little mule, and that would reduce the cost of drivers, if a mule can haul twice as many cars, it would reduce the cost of haulage.

Q. Now, how about the fact that the properties were situated along the outcrop?

A. The fact that the properties, and with particular reference to the properties consisting of that group of mines down around Prairie Creek and Mammoth Vein and Hartford Coal Company, they were situated immediately upon the outcrop, and it was possible to get into the coal without the expense of any deep shafts. We dont count a 280 foot shaft a particularly deep one. There are a [greater] many shafts across the line in Oklahoma 500 feet deep or more, and 280 feet was our deepest. You can get into the mine by slopes, driven right from the outcrop of the coal, without the expense of putting a shaft down at all, if you want to do that. Now, the property lying right below the land which we owned and leased, was not valuable to anybody else, on account of the great depth they would have to sink a shaft through to get to the coal.

3425 The shaft would be so deep it would be almost impractical to sink one on account of the expense, and impractical after it was sunk to take the coal out. Consequently the people owning the coal on the outcrop, to a certain extent, command the coal lying to the pit, because it would have to be taken out at the outcrop, and by having the coal land at the outcrop, you consider to a certain extent that you command the coal lying below it, because that is the way to get access to it; and our coal, especially the Hartford Coal Company and the Mammoth Vein, which was owned in fee, lay along the outcrop, and commanded the coal that lay above. That acreage is not accounted in any of our acreage. In the course of human events we would probably have taken it out through those mines; but that is many years in advance, however.

3426 Q. Now what was the acreage of these properties containing coal, and how much of the acreage had been mined out?

A. We had altogether twenty-seven hundred and odd acres.

Q. That includes owned and leased coal?

A. Yes, that includes all we owned or leased. Of that land we owned about 900 acres and we leased about 1700 acres. I can give you the exact figures by reference to notes if you want me to.

Q. If you know that is right you need not verify the figures by your notes.

A. (Witness referring to paper.) I will have to add that up to be sure. Shall I take the time now?

Q. No, wait awhile—yes, I wish you would add that up, I want you to figure the available tonnage.

A. 2484 acres.

Q. Of coal?

A. According to these figures of property altogether.

Q. What is that, the amount left?

A. That is the land we owned and leased.

Q. Now, how much of that land had coal underlying it? How many acres?

A. I will have to do some mathematical work on that.

Q. How long will that take?

A. Oh, about two minutes. I may do it wrong by being in too much of a hurry, but I will get it pretty close to right. About 1700 acres had coal underlying it in 1914. There had been worked out of the properties before that time,—about 250 acres.

Q. Approximately how much recoverable coal was there in there?

A. There was about,—I remember that figure, there was about 16,000,000 tons of recoverable coal; 16,000,000
3427 tons of coal of which the amount that could be recovered would depend upon the mining methods which were used in taking it out. We have used arbitrary figures on deciding after that. Roughly, two-thirds of it could be taken out, leaving sufficient pillars for the support of the roof and the protection of the property, which would leave about 11,000,000 tons to take out. That is to say, 11,000,000 tons of coal which could be taken out through the mines and sold after leaving everything necessary.

Q. I think, in your testimony, some days ago, you mentioned the available markets for this coal and we will not go into that question now. How were the other properties, in the vicinity, with reference to their available coal, unmined tonnage, which properties would compete with you in your markets? A. In this particular field?

Q. Yes. A. You mean the companies by names?

Q. No, do you have a larger available tonnage of reserve coal there than your competitors had, your near competitors at that time?

Mr. Warrum: The defendants separately object to this as immaterial, whether he had more coal than his competitors or not.

The Court: That objection is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. How were the properties at that time—at the time of the destruction in 1914, relative to their having attained development, and in connection with that answer you can describe and illustrate your situation.

A. Well, a coal mine is ordinarily, and our mines
3428 were such, that are expected to have a life of a great many years, from 20 to 30 years. Of course, the life of a coal mine depends on how much coal per year can be taken out of it, or is taken out of it, and how much coal there is in the property tributary to the particular mine. Now, a mine goes through what you might call three ages or three periods. There is a development period lasting over, I should say, three to five years, when you are bringing the mine up and expending money on it and getting it equipped first and the spacing and driving out the entries and expanding the mine and getting to a point where it reaches a profitable period. Then, for a number of years, the development work having been done and the production brought up to a considerable tonnage per day, the mine continues to operate at about the same production, other things being equal, for 15 or 20 years. Then, there is a period when the mine commences to decline, that is, when the coal commnces to be exhausted and gradually gets to a point where it is producing so little coal that it will be abandoned.

Now, in these particular mines, during the period through which we operated them, say through from 1907 or 1907 on to 1914, on account of various reasons, first lack of car supply, the mines,—the mines were on the Midland Valley Railroad which was a brand new road at that time and did not have sufficient equipment, and when the market was very good was the time the cars was shortest, and they would be shut down a great many days on account of the car shortage. In the period mentioned there were many days or weeks, or even months, when the mines were shut down entirely on account of strikes. There were other periods of the year, seasonable periods, in the spring of the year, when the de-
3429 mand was light and there were not sufficient orders to run the mine full time.

Now, in a general way you would say that a year's work was 300 days leaving out Sundays and holidays, but around coal mines, on account of the various things, we consider 250 days as a pretty fair year's work.

Now, these mines, on account of the various reasons mentioned, did not work as much as 250 days in any year. I figure that the most days in any of these mines worked was 1200 days in the whole period and from that down, in the different mines, to 800 days. The reason I am giving these days is to show that the period of which I speak, while it lasts from 1907 to 1914, seven years, the actual work done only amounted to about four years, and that the amounts were scarcely to be considered out of the development period of their career, of their life. That is particularly so as to No. 1 and the Prairie Creek mines. Less so as to the Coronado mine where the acreage was smaller.

Q. Do you know why the Coronado went down from an output of 1100 tons a day to 500 or 600 tons?

A. The maximum production at the Coronado mine has been for a few months about 1100 tons a day. That production increased. The reason for the decrease in the production is that we were unable on account of the disputes with the miners, to get the development work done or continue below the shaft level, where the bulk of our unmined coal lay. Secondly, as we worked out the coal in one entry after another in the upper part of the mine we were not able to continue the development as we did in the lower part of the mine. Otherwise the production of the mine should have kept up at 1100 tons a day during the entire period we had it.

Q. Have you finished [you] answer, Mr. Bache?

3430 A. Yes.

Q. How long prior to 1914, if at all, is it your opinion that these mines were developed to their full capacity?

A. I think that the Coronado mine was developed to its full capacity by 1912 or 1911. No 4 mine was not developed to its full capacity, neither was the Mammoth Vein No. 1. The largest tonnage No. 4 mine ever got out, we gradually brought it up to 800 or 900 tons a day shortly before the strike.

Q. What was the condition of the coal market during the few years preceding 1914?

A. Well, when these mines were opened up here in Arkansas,—when we first came over to Arkansas, the coal market was very good. The State of Texas to which a large part of this coal always went and goes, and the State of Ok-

lahoma, and all this part of the country, was developing very fast, and the railroads were taking more and more coal every year for their own use. They are always the biggest consumers. And towns were springing up and new water plants and cotton gins were being constructed and everything was being developed and the country was increasing and the demand for coal was very strong. Along about 1904 or 1905 or 1906, perhaps, we commenced to feel the competition of fuel oil. They found big oil wells down in Texas and later found bigger ones in Oklahoma. And these oil wells produced oil very cheaply. After you got the well drilled all you had to do was to turn a valve and that was all of the cost of producing, and as far as the oil people wanted to go they could take our market away from us, and they did that to a considerable extent. But we did not regard that as a very serious menace except for the time being, because we knew th oil wells which had been discovered before had gone
3431 through a period of gushing and low prices and then the oil got scarce and the price of oil went up, and we regarded that as a temporary condition that would not affect us for many years. However, they found additional oil wells up in Oklahoma and that maintained the low price for oil for more years than we expected, but along about 1913 the price of oil commenced to go up and it has been going up ever since. At one time it was selling at 10 cents a barrel and that has gradually worked up until now it is $2.00 a barrel and it does not compete with coal at all at that price. It takes about three and one half barrels of oil to equal one ton of coal. As soon as the oil people got their pipe lines in and were able to market their oil through the pipe lines all over the United States, it did not pay them to sell oil to burn in boilers any more, or not so much. On account of that competition of oil, and also on account of the discovery of gas, the market for this coal was decreased and the competition was quite intense for three or four years prior to 1914. And the capacity of the mines was greater than the market would take care of and everybody tried to sell their coal against everybody else and the prices obtainable at that time were not satisfactory, at least as not satisfactory as they had been in the preceding period.

The coal business is like a pendulum. There will be a period of high [aprices] and then several years of low prices, and then the high prices will come back, with as much certainty as the sun rises in the morning. That has been the history of it.

Q. What advantage is it, in connection with the operation of these companies, to have a group of mines?

A. Well, there is always an advantage in having your property concentrated. It is easier to superintend
3432 them from the fact they are pretty close together and it generally means that the conditions in the mines close together are about the same, and the superintendent can get around to them together and the whole thing,—there is some advantage in that.

We had built up these properties patch work. We had first of all bought a piece of land from the Hartford Coal Company, then we bought a piece of land, the Mammoth Vein Coal Company. Then to increase the acreage and make more coal available to the Hartford and Mammoth Vein mines, as we could not buy it, we leased the Mammoth Vein coal mine, 360 acres, and then we added to that, so as to give a compact body of property, the Prairie Creek mines and these Prairie Creek properties and the mines of these properties ran along side of each other in a zig-zag line.

Mr. Warrum: The defendants separately object to this as a repetition of the testimony given by the witness at the beginning of the trial.

The Court: I think it is repetition. I think you went over this portion of it before.

Mr. Drinker: We will make it brief.

Q. Make that very brief, Mr. Bache.
A. The lines of these properties did not concern us in putting in our mines because we put our mines down regardless of the lines between the leases and the properties we owned. We held them as one concern and it was all under lease, one property with the other, and the mines went through the lines whether we held them in fee or one company by another company or under lease.

By the Court:
Q. I would like to ask one question for my own information.

3433 With reference to the buildings other than the blacksmith shops and the engine houses and other than this construction which you call tipples, I mean the property which has been referred to as houses in which the men live as to which notices were given, what were the character of those buildings. It has probably been gone over but the Court has overlooked it if it has.
A. They were frame houses, generally of three rooms. Sometimes there were two three or four rooms and even five

rooms, there were one or two boarding houses containing perhaps a dozen rooms. And they were generally constructed in what we call camps where we would build a row of twenty or thirty, and they would cost to build them in 1914 about $100.00 a room.

By Mr. Drinker:

Q. Were they, any of them, destroyed before September 1914, the dwelling houses?

A. A few of the dwelling houses were destroyed before that, but the most of them were destroyed after that.

Mr. Drinker: That is the reason we did not emphasize that, your Honor.

Q. Now, Mr. Bache, basing your answer on your general knowledge, everything you know, and particularly on your specific knowledge as to these properties, the development, the improvements, the leaseholds held, all in connection with them, state in what your opinion was the reasonable value of the property known as Prairie Creek No. 3 and No. 4, with the tipple, shaft, development, slopes and with the leasehold appurtenant to that property as of July 1914, before its destruction? A. About $300,000.00.

Q. What in your opinion was the reasonable value of that property after its destruction and injury, but prior to
3434 the forfeiture of the lease appurtenant to it?

A. It was $200,000.00.

Q. What, in your opinion, was the reasonable value of that property after the forfeiture of the leasehold appurtenant to it, and the entry of the leasehold by the lessor and the eviction of the lessee?

A. Nothing except the scrap left from the fire.

Q. How much was that worth?

A. Four or five thousand dollars.

Q. Now, Mr. Bache, take the property known as Mammoth Vein No. 1, with the 360 acre lease from the Cherokee Construction Company appurtenant to it, and basing your opinion on your entire knowledge of the situation and particularly on your specific knowledge of this property, its equipment, development, with the leasehold and all of the rights incident and appurtenant to it, and used in connection with it, what, in your opinion, was the [reasonabla] value of that property in July, 1914, before its destruction? A. $340,000.00.

Q. $340,000.00. A. Yes, sir.

Q. What, in your opinion, would the reasonable value of that property, including the leaseholds, developments and

all matters I have mentioned subsequent to the destruction of the property but prior to the forfeiture of the leasehold?

A. $240,000.00.

Q. What, in your opinion, was the reasonable value of that property after the forfeiture of the leasehold and the entry of the lessor into the leased property and the eviction of the lessee?

A. The value of the scrap left after the fire.

3435 Q. How much was that?

A. About four or five thousand dollars.

Q. Take now the Coronado property. Basing your opinion on your general knowledge and particularly on your specific knowledge of the Coronado mine, its equipment, the leaseholds appurtenant to it from the Sebastian County Coal Company to the Coronado Coal Company, assignee of Franklin Bache, what, in your opinion, was the reasonable value of that Coronado property, including the plant, development, and all of the equipment appurtenant to it, and including the leasehold from the Sebastian County Coal Company to which I have referred, in July 1914, before the destruction of the plant.

A. Do you want the two together, the Sebastian and the Coronado?

Q. I don't want you to include the lease from Dowd to the Sebastian, because that did not belong to the Coronado Coal Company. A. About $125,000.00.

Q. What, in your opinion, was the reasonable value of that property, after its destruction, but prior to the forfeiture of the leasehold? A. $60,000.00.

Q. What, in your opinion, was the reasonable value of that property, after the forfeiture of the leasehold from the Sebastian County Coal Company to the Coronado Coal Company and the entry by the lessor and the eviction of the lessee therefrom.

A. The value of the junk left after the fire.

Q. And what was the value of that?

A. About the same as the other,—about $5,000.00.

Q. What, in your opinion, was the reasonable value of the leasehold held by the Sebastian County Coal Com-

3436 pany from Boone, et al, prior to its forfeiture and the entry by the lessor into the leased premises and the eviction of the [lesee]? A. $17,000.00.

Q. What, in your opinion, was the reasonable value of the lease from the Cherokee Construction Company to the Mammoth Vein Coal Company on the property at Mine No. 6 in connection with the rights under the agreement between the Mammoth Vein Coal Mining Company and the Cherokee Con-

struction Company, being Plaintiffs Exhibit No. 103, but irrespective of the McKitchen lease? If you do not feel competent to answer that question,—

A. (Interrupting.) I do not know that I quite catch your question.

Q. Can you give any value to the lease at No. 6 taken in connection with the agreement between the Cherokee Construction Company and the Mammoth Vein Coal Company for the taking out of the coal from the McKitchen Lease through the No. 6 workings independent of the value of the McKitchen lease?

A. I do not see how I can answer the question that way.

Q. Well, now, explain the situation in connection with the relation with the McKitchen lease and the lease of No. 6 and the agreement [wit] the Cherokee Construction Company for taking out the McKitchen coal through No. 6.

A. No. 6 mine was equipped with a 100 foot shaft and it immediately adjoined a tract of 152 acres known as the McKitchen tract. There was no opening on the McKitchen tract. It was very close, however, to the shaft known as No. 6, and we decided, in order to have additional coal, to produce through No. 6 shaft, to make a lease from the McKitchen people, and we did so and paid them a dead rental for a number of years on it. Now, we did not think it necessary or
3437 desirable to go to the expense of putting in a shaft and equipping a new mine on the McKitchen lease, because it was so close to No. 6 shaft through which the coal could be taken. So, we entered into a contract with the people who owned No. 6 shaft, that is to say, the Cherokee Construction Company, by which they agreed to let us remove all the coal which we wished to remove from the McKitchen lease through this shaft, and use the shaft, for which we were to pay two cents a ton as a rent for all of the coal that was taken through this shaft.

Q. Now, was the lease on the No. 6 from the Cherokee Construction Company one of the leases that was cancelled by order of the Court? A. Yes, sir.

Q. Now, what, in your opinion, was the reasonable value of the plant at No. 6 with the rights incident to the Cherokee Construction Company lease there to which I have referred, the rights in connection with the agreement with the Cherokee Construction Company to take out the coal from the McKitchen lease through No. 6 and the McKitchen lease,—all those rights together. Can you state in your opinion the reasonable value of those prior to the cancellation of the Cherokee lease? A. Yes, I consider that worth $37,000.00.

Q. What, in your opinion, was the reasonable value of all those rights and properties after the cancellation of the Cherokee lease? A. Nothing at all.

Q. Did you look up the question of that Rock Island bond?

A. I did. Mr. Finley gave me the figures, or at least he showed them to me.

Q. Can he testify about that?

3438 A. I think he can. They are from his books. I do not remember definitely the figures.

Mr. Drinker: You may cross-examine.

Recross Examination

By Mr. Covington:

Q. How much more did your coal produced at Prairie Creek, [seell] on the market for than other coal in that vicinity? A. What is that?

Q. For how much did your coal produced at Prairie Creek sell on the market than other coal produced in that vicinity?

A. I cannot tell you what other coal sold for. I did not have access to their books, the books of other people.

Q. You have been in the coal business a long time, have you not? A. Yes.

Q. And you have sold a great deal of coal? A. Yes.

Q. Did your coal sell for a greater price on the market than other coal?

A. Some of it did, and some sold for the same.

Q. Where did you produce a coal that sold for more on the market than other coal?

A. Coal produced at No. 6 mine on account of it being liked for domestic purposes generally sold for a higher price than almost any other mine in the state,—in the county, I should have said.

Q. You sold every ton of your coal at a uniform price through an agency, didn't you, Mr. Bache? A. No.

Q. You did not? A. No.

Q. For the last three years you ran? A. No.

Q. Who handled it?

3439 A. We handled some of it ourselves and sold [it] some of it through an agency.

Q. What per cent did you handle yourselves?

A. We handled off-hand, I would say 25 per cent ourselves.

Q. And did the McAlester Fuel Company handle the rest of it?

A. Practically all of the rest. Some of it we did not sell through them, but they handled the bulk of it.

Q. You stated that there remained unmined 11,000,000 tons of coal on the properties held in fee, and under lease; how

many tons of the 11,000,000 tons is in the fee, in the property owned in fee?

A. If you will wait a few moments I will figure it out. My memory does not run to that.

Q. Very well.

A. 2,800,000 tons on the land we owned in fee.

Q. How much? A. 2,800,000.

Q. 2,800,000 tons on the land you owned in fee?

A. Yes, that is all of the coal we could mine out. That does not mean the total contents of the land. I am figuring, using a two-thirds basis, that is about two-thirds of the actual coal in the land. The actual coal would be a little over 4,000,000 tons.

Q. I believe you stated a moment ago that a certain acreage held in fee and leased was on the crop, what is known as the crop and was especially valuable. A. Yes.

Q. For the reason it was on the crop? A. Yes.

Q. And that you could mine down through that into lands belonging to adjacent owners, whereas it was too deep for them to go down and get it, is that right? A. Yes.

3440 Q. That is, by reason of the location of your coal, you could force adjacent owners to take what you wanted to offer them, and it was especially valuable to you for that reason, is that it?

A. I did not say we could force adjacent owners to take what we wanted to offer them.

Q. I know you did not say that, but isn't that the reason you attach especial value to it? A. No.

Q. Because they cannot go down to it and you can, you can fix your own price on it. A. No.

Q. You mentioned a moment ago about Mine No. 4 having reached a maximum of 800 or 900 tons just before the strike. Did you mean to say "strike"? A. Yes.

Q. Do you mean to say that the miners came out on strike at No. 4?

A. That is what I call it and I take their phraseology.

Q. Don't you know, Mr. Bache, that you closed that mine down in violation of your contract with them and that they did not know anything about it until the next morning when they came down to go to work? A. No.

Q. What did they strike for?

A. Because we were working men not members of the union.

Q. Didn't you allege in your original complaint filed in this case that you decided to go on the open shop basis and closed down as a union shop on the 28th of March, 1914, and you closed down No. 4?

A. That is the time we stopped work with the union and started open shop.

Q. Yes, but now you say you had a strike. If you had
3441 no strike, you closed your mine down just as you said in that complaint?

A. No, we stopped mining on one basis and started the other. We told all of the men down there we would be glad to have them come to work and to stay at work.

Q. And placed detectives around there with guns to keep them away from there, didn't you?

A. No, sir, we placed those detectives there,—

Mr. Covington: That is all.

Mr. McDonough: Go ahead and finish your answer, Mr. Bache.

Mr. Covington: Just one moment.

Q. You reported to the State Mine Inspector, did you not, with reference to the coal mined and strikes and things you had down there. Isn't this your signature (indicating) "F. Bache, Receiver"? A. That is not my signature, no, sir.

Q. Then you did not sign that?

A. No, I did not sign that.

Q. Who did sign it?

A. I do not know, I do not recognize the signature.

Q. Do you know Mr. Finley's handwriting?

A. I am not a—yes, I should say I did know his handwriting.

Q. Is that your signature, Mr. Bache (indicating)?

A. No, I did not sign it, it is my name?

Q. Yes, it is "F. Bache, Receiver". Whose signature is it? A. I do not know. Let me look at it again.

(Document referred to handed witness.)

A. (Continuing.) I think Mr. Finley signed that. I see after the name the initial I take to be "F", which would indicate Mr. Finley signed it.

3442 Q. Is this the same signature (indicating)?

A. Yes, it looks like the same one.

Q. Did you prepare these reports or assist in the preparation of them?

A. I don't know. I never saw them and do not remember them.

Q. Is that your signature (indicating)?

A. That is signed by the same person that signed the others, evidently.

Q. Here is one other; did you sign that? There is no initial on it. A. No, I did not sign that.

Q. Did you authorize Mr. Finley to make these reports?

A. I have no recollection of them whatever, sir.

Q. Don't you know how they got in there with your name signed to them as receiver? How they were sent in to the State Mine Inspector?

A. No, I do not recall the circumstances at all. I have no doubt that they were routine reports that came in from time to time and go out without much attention.

Mr. Covington: That is all.

Mr. Drinker: That is all, Mr. Bache.

3443 H. P. HILLIARD, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your name? A. Henry P. Hilliard.

Q. You are one of the receivers in this case? A. Yes.

Q. Have you any personal interest in any of these companies, Mr. Hilliard? A. None whatever.

Q. What interest do you represent in the receivership?

A. I am receiver of the American National Bank, in this city, and as such receiver of that bank I hold a considerable amount of claims against the different coal companies of which I am receiver. They owe my trust a very considerable amount of money and I represent 3000 creditors of the American National Bank. That is the interest I have in it.

Q. Now, in connection with the cross-examination of Mr. Bache, counsel for the defendants alluded to certain transactions, loans made by the American National Bank to Mr. Bache or to some of these companies particularly in connection with a period when Mr. Boone was a stockholder of the American National Bank.

A. What do you mean by saying he was a stockholder? He is a stockholder yet. Do you mean an officer?

Q. Yes, an officer. Do you know from your knowledge of the affairs of the American National Bank what loans were made by the American National Bank to any of these companies or to Mr. Bache or to Mr. Denman or to Mr. Hilling?

Mr. Warrum: The defendants separately object to this even if the question was asked on cross-examination suggested by counsel. That does not make this proper
3444 testimony.

The Court: I do not understand there is any issue on this.

Mr. Drinker: If your Honor please, these gentlemen on cross-examination, went into these things and tried to throw some sort of nastiness over Mr. Bache's transactions with the American National Bank and I want to show what they were.

The Court: It was not a proper cross-examination and if you had made proper objection it would have been excluded. There was a lot of cross-examination that the Court would not have admitted if proper objection had been made.

Mr. Drinker: I did not want to object to it.

The Court: Then you must let the record stand as it is.

Mr. Drinker: We were just going to ask him about this one transaction.

The Court: You can examine him only on matters material in the cross-examination. This does not open up the field, the objection is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

The Court: It does not make any difference what [lonas] were made by these companies, if these people destroyed this property they are liable for it in a reasonable measure of damages.

Mr. Warrum: Except, as we understand the authorities, we have a right to question as to what they were worth. When there is no market value we have a right to go into the question.

3445 The Court: Yes, the right to go into that question, but not the right to go into the question of borrowing money.

Mr. Warrum: But we have the right to go into the question of what they cost?

The Court: Certainly.

Mr. Drinker: There is no other purpose your Honor, in offering this testimony, except to show there was no flimflam business between Mr. Bache and the bank.

The Court: I do not think there is anything such as that in the testimony, but if it develops it may be gone into on rebuttal.

Mr. Drinker: You may cross-examine.

Mr. Covington: No cross-examination.

(Witness excused.)

Mr. Drinker: I want to ask Mr. Finley one question.

The Court: Very well.

3446 C. H. FINLEY, called as a witness in behalf of the plaintiffs, having been duly sworn, testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. Finley, I hand you Plaintiffs Exhibit No. 159, which Mr. Bache identified as a bond and agreement with the Rock Island Railroad. Are you familiar with that transaction? And with any damage which resulted to the Bache-Denman Coal Company by reason of the destruction of this property on account of that bond and contract?

A. Yes, sir.

Q. Describe what it was.

A. The Rock Island Railroad has filed a claim—two claims, on account of that.

Mr. Warrum: The defendants separately object to this testimony because the mere filing of a claim would not render these parties liable.

The Court: What is this?

Mr. Drinker: I was going to ask him the nature of it.

The Court: I suggest that you had better find out first.

Q. What is the nature of this claim?

A. This is a bond that guaranteed the Rock Island Railroad the fulfillment of this contract which called for the shipment of 40,000 tons of coal every year over their rails. That much coal was not shipped and the Rock Island Railroad is claiming this sum of money in violation of that contract. The claim was filed after the receiver was appointed.

Q. Why did not the company ship the coal in accord-
3447 ance with that contract?

A. Well, that is going into the operating end of the business regarding which,—

Q. (Interrupting.) Did the destruction of the properties have anything to do with that?

A. Well, I think so. They certainly could not ship it after they were destroyed.

Mr. Warrum: We object to that as conjecture on the part of this witness.

The Court: The objection is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Now, Mr. Finley,—

Mr. Drinker: I do not mean to withdraw the question.

Q. I hand you four batches of papers which the reporter has marked with the proper exhibit numbers, marking each bunch with a separate exhibit number. They have been marked Plaintiffs Exhibits No 160, 161, 162 and 163, and I will ask you what they are?

A. 161 is a pay-roll of the Mammoth Vein Coal Company's mine No. 6.

Q. For what period?

A. For the first and the second half of January, 1914, both bound in one volume, in that volume.

Q. What is Exhibit No. 161?

A. No, that was 161. 162 is a pay-roll of the Prairie Creek Coal Mining Company's Mine No. 4 for the second half of March, 1914.

Q. What is the next one?

A. No. 160 is the Mammoth Vein Coal Company's Mine No. 1 pay-roll for the first half of March, 1914?

3448 Q. What is the next one?

A. No. 163 is the Coronado Coal Company's pay-roll for the first half of March, 1914.

Q. During the several dates of those pay-rolls, do they show the names of all of the miners and mine workers who were working at those operations during those periods?

A. Each pay-roll shows all of the men that worked at those different mines during the period covered.

Q. During those periods, were those mines worked under union or non-union conditions?

A. Under union conditions.

Q. Are the men whose names are mentioned in those pay-rolls members of the United Mine Workers?

A. All except the mine foreman and the mine clerk and the weigh boss; that is about all.

Mr. Drinker: We offer in evidence these Exhibits 160, 161, 162 and 163, in the same way that the Central Coal & Coke ones were offered, for future reference without being spread on the record, to be referred to during the course of the proceedings.

Mr. Warrum: May we see that?

Mr. Drinker: Yes, sir; (handing documents to counsel).

Mr. Warrum: If the Court please, the defendants separately object, not to the insertion of the same, because it only contains a great mass of stuff that would encumber the record. I understand it is not for purpose of presentation to the jury.

Mr. Drinker: It is merely to show who were the employees there, and that they were members of the union, so that identifies all these people as members of the union.

3449 The Court: I think it is competent for you to do that. I do not know of any way it can be done any better.

Mr. Warrum: We object to it, the defendants separately object to it for that reason I have stated, and for the reason it is immaterial as to who these parties were that were working there, unless they have been proven to be conspirators in this matter, and the mere introduction of a list of names throws no light upon any issuable fact in this controversy.

The Court: They may be received as a list of the employees of those mines at that time.

Mr. Drinker: And it is offered for the purpose of showing that they were members of the union.

The Court: It is in evidence here for all purposes that it is competent to prove. It does not prove anything with reference to any union, except the list is here, unless they are connected up by some other testimony.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: You may cross-examine

Mr. Warrum: If the Court please I wish these books marked simply for identification.

Mr. Drinker: May I ask, Mr. Finley another question?

The Court: Yes.

Q. Mr. Finley, you are familiar with the financial end of all these companies and were for a considerable period prior to July, 1914? A. Yes, sir.

Q. And thereafter? A. Yes, sir.

Q. What, in your opinion, was the reason that these companies were unable to meet their obligations and to pay

3450 their royalties on their leases at the time when the leases were forfeited by order of Court?

Mr. Warrum: The defendants separately object to this question on the ground that it calls for pure conjecture and speculation on the part of the witness.

The Court: Objection is sutained.

To which ruling of the Court, the plaintiffs and each of them, at the time duly excepted and still except.

Q. During the period prior to April 1914, were these companies constantly able to meet their obligations and to raise money for their future development?

A. They had been, yes, sir.

Q. And after July 1914, were they able to raise money for the improvement of their properties or to meet their obligations? A. No, sir.

Q. Have you the accurate data in connection with the salary received by Mr. Bache, that you spoke about this morning? A. Yes.

Q. Give us an accurate statement of it, Mr. Finley?

A. From December, 1905 to July 1906, inclusive, Mr. Bache's salary was $125.00 a month, paid by the Mammotth Vein Coal Company. And from August 1906 to November 1906, inclusive, it was $325.00 a month, paid by the Mammoth Vein Coal Company. From December 1906 to August 1907, it was $250.00 a month paid by the Mammoth Vein Coal Company. Up to that period I have no record of what the Kali-Inla Company may have paid him.

Q. You do not know whether they may have paid him something in addition to that or not?

A. No, I did not know. I have no data on this, but from this rate on I have. From September 1907 to Jan-
3451 uary 1910 his salary was $500.00 a month one-half of which was paid by the Mammoth Vein Coal Company and one-half by the Kali-Inla Coal Company. From February 1910 to August 1910 inclusive, his salary was $500.00 a month, half of which was paid by the Coronado Coal Company and half of it by the Mammoth Vein Coal Company. From November 1910 to January 1912, inclusive,—

Mr. Warrum (interrupting): If the Court please, the defendants separately object to this. It has already been gone over on direct examination, the full amounts having been stated and the proportionate amounts paid by the different companies also having been stated.

The Court: That is my recollection.

Mr. Drinker: Not accurately, if the Court please.

He was just guessing at it before. Now he knows it accurately.

The Court: What is the theory of it?

Mr. Drinker: Mr. Bache's integrity, his personality and his integrity has been attacked from the beginning.

The Court: If some man having no connection with this matter whatever should come in here and attack his integrity or personality that would not be material; this is entirely immaterial and the objection will be sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: You may cross-examine.

3452

Cross-Examination

By Mr. Warrum:

The Court: It may be made competent on rebuttal.

Mr Warrum: Yes, sir, your Honor, I didn't want to interrupt, but we don't [—] them to anticipate.

Q. I will hand you what has been marked for identification only defendants' Exhibit 16, and will ask you to state what that is; advising you in the first place that those are the books produced by you in accordance to the order of the court.

A. This is the cash book of the Sebastian Coal Company.

Q. Defendants' Exhibit 17 for identification I hand to you and ask you to state what it is?

A. That is the cash book of the Coronado Coal Company beginning at May, 1912, and coming on down to date.

Q. I hand you what has been marked for indentification defendants' Exhibit 18, and will ask you to state what it is?

A. It is the cash book of the Mammoth Coal Mining Company, beginning at March, 1912, and coming on down to date.

Q. I hand you what has been marked for identification Defendants' Exhibit 19, and will ask you to state what that it?

A. That is the Bache & Denman Coal Company cash book beginning August, 1913, and continuing on down to date.

Q. And this has been marked for identification defendants' Exhibit 20, and please state what that is?

A. Cash book of the Bache-Denman Coal Company beginning with September, 1912, and continuing on down to date.

Q. Defendants' Exhibit 21?
A. Cash book of the Bache-Denman Coal Company beginning with January, 1911, and coming on down on date.
Q. The book marked for identification defendants
3453 Exhibit 22?
A. That is the Denman Coal Company's cash book beginning at May, 1913, and continuing on down to date.
Q. And I hand you defendants' Exhibit 23, marked for identification, and will ask you what that is?
A. Cash book of the Prairie Creek Coal Mining Company beginning January, 1907, and containing on down to date.
Q. And the book marked for identification defendants' Exhibit 24?
A. Cash book of the Hartford Coal Company beginning at March, 1912, and continuing down to date.
Q. And the book marked defendants' Exhibit 25 for identification, state what that is?
A. Minute book of the stockholders and directors meeting of the Bache-Denman Coal Company.

The Court: What is this cross-examination of?

Mr. Warrum: I am trying to get them identified, for fear that the order,—

The Court: That would be with your own witness but it is not cross-examination, surely.

Q. Mr. Finley, you just testified in answer to a question propounded by Mr. Drinker, that the Bache-Denman Company these plaintiff companies, did not have any money in July to pay the accrued royalties, is that right?
A. No, I understood the question to be to continue the business.
Q. To continue the business,—were you not asked by Mr. Drinker if it was not a fact that you did not have the money to pay the royalties upon these leases, after July, 1914?
A. That was included in his question of course.

Mr. Warrum: Now, I would like in connection with
3454 this cross-examination, if the court please, to introduce portions of these exhibits.

The Court: Very well.

Q. Referring to the cash ledger of the Denman Coal Company,—just a moment. When was the receiver appointed in this case? A. July 25th, 1914.

Q. On the 25th, of July? A. Yes, sir.

Q. Referring to the exhibit, defendants', No. 22, on page 26, being the cash ledger of the Denman Coal Company, I call your attention to an account, July 23rd, "Bills receivble, $1,043.10 and on account demand notes payable, proceeds of demand note given the Coronado Coal Company on July 24th, $5,837.88;" and similar item on the same date; "Proceeds of demand note given K. I. Coal Co., $2,947.38;" and a similar item of July 24th, "Demand notes receivable, payment for Seb. Coal Company, note dated 12-31-15, $1500.00;" and will ask you to state whether or not that represented a cash transaction of that date?

A. Yes, sir, it does.

Q. I hand you defendants' Exhibit 21, cash ledger of the Mammoth Vein Coal Company, directing your attention to page 85 thereof, and calling your attention especially to these items: "Demand notes payable proceeds of D N, in favor of K. I. C. Co., on July 24th, $40,000.00"; another item of the same date. "Mortgage notes receivable, proceeds of H. C. Co. sold to B. D. C. Co. $5,000.00"; and will ask you if those items represent a cash transaction of that date?

A. The first one there represents a transaction that was made sometime before that, but had not gotten on the books until this time. The $40,000.00 item.

Q. Just a moment; may I interrupt you without interfering with your explanation? Did you keep these books, or were they kept under your direction?

3455

A. They were kept under my direction, I did not make the entries myself.

Q. Did you know why the entry was not made at the time the cash was received?

A. Yes, sir, I know why it was; we were so busy we didn't get to do it; the money went into the bank, and was used right along, and the books were written up just as soon as we got to it.

Q. Now, just before that is another item, is there not, of date July,—July 2nd, I believe? A. Yes, sir.

Q. And that is for $38.98, I believe? A. Yes, sir.

Q. And this $40,000.00 [ite] immediately following that rate, July 24th. Can you explain why, if it was merely a post dating of the item, that it was given the date of the 24th, instead of the day when the cash was actually received?

A. That is an error of the bookkeeping, he should have shown the date when it was supposed to have gone into the cash book, but he has not shown it.

Q. Now I will call your attention to defendants Exhibit 20, being cash ledger as identified by you of the Bache-Den-

man Coal Company, calling your attention to page 19 thereof, and particularly calling your attention to these items: "July 24, 1914, demand notes payable, proceeds of Denman note in favor of K. I. C. Co. $75,000.00". Does that represent a cash transaction of that date?

A. That is the same as the $40,000.00 item in the other book there. It should have been written up in April, but it was not done until in July, although the money was received and was used.

Q. The money was received and used in April, was
3456 it?

A. Between April and July.

Q. I beg your pardon, in April and July, or April instead of July? A. From April on down to July.

Q. When was this money received?

A. It was received in,—

Q. (interrupting) Different installments?

A. It was received in April, shortly after the note was made.

Q. Was it received in one installment, or several?

A. Well, I guess I will have to go back a little and explain that matter. When the Storrie loan was made and these various notes of the Arkansas companies were given to the Kali Inla Coal Company, to take up certain indebtedness that already existed, and for cash besides, these items all had to get on the books, but it was impossible to put them on immediately after the loan was made, because it takes a certain amount of time to work all of those things into their proper book entries. We got to it as soon as we could.

Q. You have other items here running through the month of June, have you not, representing cash received?

A. Yes, sir.

Q. One item, "Coronado Coal Company, $15.05", is there not, on the 30th of June, 1914? A. Yes, sir.

Q. But this $75,000.00 item was postponed until July 24th?

A. I expect the reason for that was that the bookkeeper was waiting for me to tell him to do it, and I didn't notice that it had not been done, until about that time.

Q. I call your attention to defendants' Exhibit 19, which is cash ledger as identified by you of the Bache & Denman Coal Company, and to an item marked July 24th, "Demand notes payable proceeds of the D. N. to K. I. C. Co., $18,-000.00"; was that a cash transaction?

3457 A. The same as the other I have just explained.

Mr. McDonough: What year.

Q. January, 1914, at the top; that is correct, is it?

A. Yes, sir.

Q. Calling your attention to defendants' Exhibit 18, which is a cash ledger, and identified by you, of the Mammoth Vein Coal Mining Company, on page 25, I call your attention particularly to this item of July 24th: "Demand note payable proceeds of demand notes given M. V. Coal Co., 7-24-14, $8500.00"; does that represent a cash transaction of that date? A. Yes, sir.

Q. And on the same date, further down, "Demand notes payable proceeds of D N favor of K. I. C. Co., dated 7-24-14, Int. 8 per cent, $3,448.00". Does that represent a cash transaction of that date? A. Yes, sir.

Q. I call your attention to defendants' Exhibit 17, identified by you as the cash ledger of the Coronado Coal Company, and on page 45 thereof, being an account for the month of July, 1914, calling your attention particularly to this item of July 24: "Demand notes payable, proceeds of demand note in favor of K. I. C. Co., $27,000.00"; does that present a cash transaction?

A. That is the same as the other notes in the other books that I have been explaining.

Q. Cash received by this company on this date?

A. Yes, sir.

Q. And another item of the same date: "Mortgage notes renewal, bills receivable proceeds to H. C. Co., mortgage note sold to B. D. Co., $5,000.00"; does that represent cash received on that date?

3458 A. Either that date or a short time before, yes, sir.

Q. I am trying to be just as expedient as possible, if your Honor please. It is embarrassing to me as well as an annoyance to the court. I call your attention to defendants' Exhibit 16, which you have identified as cash ledger of the Sebastian County Coal Cmpany, and on page 52 thereof, calling your attention specially,—

The Court: Perhaps I can give you a little time; it is time for the jury to have their usual recess.

(A recess was here taken of five minutes.)

Q. (Mr. Warrum) Referring to the last question, defendants' Exhibit 16, on page 60, under date of July 24th, 1914: "Demand notes payable, proceeds of D N in favor of K. I. C. Co., $10,000.00"; does that represent a cash transaction, money received at that time?

A. That was money received, with the same expiration as to the other companies there.

Q. Can you tell from this book when the money was received?

A. Yes, sir, I think so. Now, I will have to go back a little in order to explain this so it will be understood.

Q. I will withdraw that question for the moment, in order to get through with all the books, then can you make your explanation of all of them. I call your attention to the opposite page, under date of 7/25, balance taken over by Bache, Receiver, $63.15. Does that represent the money turned over to Mr. Bache the next day?

A. Yes, sir, by that company.

Q. By the Sebastian County Coal Company?

A. Yes, sir.

Q. Does Exhibit 17, I call your attention to, it is the
3459 cash ledger of the Coronado Coal Company, and call your attention to page 45, the item of July 24th, 1914: "Demand notes payable, proceeds of demand note in favor of K. I. C. Co., $27,000.00"; does that represent a cash transaction, cash received by this particular company on that date?

A. We have been over that once and that has been explained.

Q. Exhibit 17? A. Yes, sir.

Mr. Warrum: I will withdraw that.

Q. I call your attention to defendant's Exhibit 22, the cash ledger of the Denman Coal Company, drawing to your attention page 26 thereof, and particularly to the item of July 24th: "Demand notes payable, proceeds of demand note from K. I. C. Co., 12-24-13, $2,947.78"; the second item of the same date: "Demand notes payable, proceeds of demand note, 7-24-14, $5,837.88"; and July 24th, the same date, demand notes receivable, payment from Sebastian County Coal Co. of note dated 12-21-13, $1500.00"; do those items, all three or any of them, represent cash received by this company on that date?

A. All three of them do, yes, sir.

Q. Can you state to the court and jury how much in the aggregate was turned over by these plaintiff companies to the receiver? A. A trifle over $2,000.00.

The Court: When was that, Mr. Warrum?

Mr. Warrum: The next day.

The Court: When was that?

Mr. Warrum: In 1914, July 25th.

A. Will I be permitted to finish, I started to say a moment ago,—

Q. (interrupting). Yes, sir.

A. I wanted to say how these cash accounts were
3460 kept. Years ago we had a separate bank account for each one of these companies, various companies, and we kept one account in the American National Bank, each company had an account of its own, and quite often happened that one company would issue checks for more than it might have in the bank, and in order to keep from showing an overdraft in the bank, we would have to transfer funds from one company to another, hurriedly a good many times, in order to protect the company's account at the bank, and save having an overdraft at the bank. And it was suggested, I think by the bank people themselves, that it would be much simpler if we would just carry the money in the bank in one company's name, and let all the checks be charged to that company in the bank, and keep our own books so as to show which company had the bank balance or what portion of it belonged to each company. So that method was adopted, and we would issue checks by the companies, regardless of how that company's particular cash book stood, provided there was money on deposit in the bank to the general fund, and at the end of the month they would balance up the different companies' cash books, and see how the balance stood, and then notes would be made between the companies, to take up any portion of the bank funds that they had drawn out in excess of what they had in there, and that is why the entries here on July 25th, or 24th, 1914, show large receipts on that day. The books, on the opposite show disbursements of equal amounts for any funds that passed between the companies, in notes that took up these balances which they had overdrawn of their share of the bank account.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. Mr. Finley, was any money at all received by any of
3461 these companies during the period prior to the receivership, except what was paid out to its creditors, that was not turned over to Mr. Bache as receiver when he became receiver? A. Not a cent.

Q. During the period as to which Mr. Warrum has questioned you, were there large amounts of money paid out by the companies on the other side of the books? A. Yes, sir.

Q. When Mr. Warrum called your attention to certain notes that had been discounted, and money paid to the vari-

ous companies, was there on the other side of the books corresponding payments by the company for other purposes, corporate purposes, in connection with their business, that corresponded to those payments?

A. Yes, sir, the cash books probably would show that money had been spent before they received it. That is on account of that adjustment between the companies that I have spoken of.

Q. Then every nickel that any of these companies got prior to the receivership was either spent for its corporate purposes, or in payment of its creditors, or was turned over to Mr. Bache when he became receiver? A. Yes, sir.

Q. And have these books been gone over by Judge Youmans in this court in connection with the receivership?

Mr. Warrum: I object to that as calling for a conclusion.

The Court: I think he may answer, as long as you brought it out.

To which ruling of the court and defendants, and each of them, then and there duly excepted and still except.

Q. Have these books all been gone over in this court, 3462 in connection with the receivership proceedings?

A. Yes, sir, they had me on the stand here a day and a half in the latter part of 1914.

Q. Has there been ever any claim that has been sustained in connection with these receivership proceedings, that any money was abstracted from these companies improperly?

Mr. Warrum: I object to that as calling for an improper conclusion.

The Court: Has any claim been made to you, you can ask him that.

Q. Has any claim been made to you that any money has been improperly abstracted from these companies in the period immediately preceding Mr. Bache's receivership?

A. No claim has been made direct to me, no, sir; and I don't know of any.

Q. Are you one of the receivers of these companies?

A. Yes, sir.

Q. How long have you been that?

A. Since October, 1916.

Q. Did Mr. Bache as receiver, after his appointment, regularly make his reports to Judge Youmans in this court, what he did under that receivership? A. Yes, sir.

Q. Did he report how much money he got from the companies? A. Yes, sir.

Q. And after Mr. Bache's retirement, did the succeeding receivers, down to you and Mr. Hilliard, make those reports?

A. Once a month, yes, sir.

Q. And these reports have been filed in court?

A. Yes, sir, except possibly the last one, I have been kept so busy since October, I don't think the October report has been filed yet.

3463 Q. Has any of these reports been upset by any creditors? A. No, sir.

Q. Or anybody connected with this company?

A. No, sir.

Q. Or anybody that had any claims to dispute it?

A. No, sir.

Q. I want to ask you just one more question. Then the upshot of these items to which Mr. Warrum has called your attention is, is it, that the Kali Inla Company, during the period between April and July, kept loaning money to all of the other companies to keep them going? A. Yes, sir.

Q. And even mortgaged its own property in order to get money to keep them going? A. Yes, sir.

Recross Examination

By Mr. Warrum:

Q. Then they don't represent debts that had accumulated before April, 1914? A. Part of them do, yes, sir.

Q. Now, you are familiar with this system of books, Mr. Finley. There are two columns here. What do those columns,—what is the difference between an item in one and an item in the other?

A. An item in one, the first, posts to the items receivable column, and the items in the other post to the general ledger.

Q. They both represent, however, cash transactions?

A. Yes, sir.

Witness excused.

Mr. Hull: I have one deposition to offer in proof, regarding the shipment of arms and ammunition. I offered
3464 it one time, and offered to put it in the record without reading it, but counsel objected to it. Now, I will ask them if they object to introducing it without reading it.

Mr. Warrum: No.

Mr. Hull: I offer then the deposition of William J. Clinton, and John J. Morris, taken in New York in July, 1917.

The Court: Either party can refer to them, and they will be considered in evidence.

(Said depositions of William J. Clinton and John J. Morris, so offered in evidence, are as follows):

The said WILLIAM J. CLINTON being duly sworn according to law to tell the truth, the whole truth and nothing but the truth, in the above entitled cause, testified as follows:

Examination

By Mr. Kobbe:

Q. Where do you live?

A. 364 Lenox Avenue, New York City.

Q. Do you appear here pursuant to subpoena served upon you? A. Yes, sir.

Q. By whom are you employed?

A. Remington Arms Union Metallic Cartridge Company.

Q. At which office are you employed?

A. 29 Warren Street.

Q. What is the nature of your employment by the Remington Arms Company? A. Assistant shipping clerk.

Q. And as assistant shipping clerk of the company what are your general duties?

A. To ship goods to customers and make receipts out for shipments, domestic shipments.

Q. I show you United States Express Company receipt dated June 10, 1914, one case, consignee John Mastell,
3465 Hartford, Arkansas, valuation $230, and I ask you in whose handwriting that receipt is?

A. It is in my handwriting.

Mr. Kobbe: I offer in evidence this United States Express Company receipt dated June 10, 1914.

The receipt is received in evidence and marked Plaintiffs' Exhibit A, F. K. H. June 18, 1915.

Q. To whom did you deliver the case of goods referred to in Plaintiff's Exhibit A, F. K. H, June 18, 1915?

A. To the Express driver.

Q. And by whom was the instrument receipted?

A. By the driver of the United States Express Company.

Q. I show you United States Express Company receipt dated June 18, 1914, for five cases, valued at $300, consigned to Oscar Layton, Hartford, Arkansas, and ask you in whose handwriting this receipt is made out?

A. My handwriting.

Mr. Kobbe: I offer in evidence this United States Express Company receipt dated June 18, 1914.

The receipt is received in evidence and marked Plaintiffs' Exhibit B, F. K. H. June 18, 1915.

Q. To whom did you deliver the five cases referred to in the receipt offered in evidence, Plaintiffs' Exhibit B, F. K. H. June 18, 1914? A. To the Express driver.

Q. By whom was this instrument receipted?

A. By the Express driver.

Q. Referring to the case of goods in Plaintiffs' Exhibit A, F. K. H., will you state where you delivered the case to the Express Company? A. At 29 Warren Street.

Q. Referring to the case of goods referred to in Plaintiff's Exhibit B, F. K. H., will you state where you delivered the goods to the Express Company?

3466 A. At 29 Warren Street.

Q. Referring to Plaintiffs' Exhibit A, will you state what the case referred to in the exhibit contained?

A. Well, a case of rifles.

Q. Referring to Plaintiffs' Exhibit B, dated June 18, 1914, will you state what the five cases referred to in the receipt contained?

A. Four cases of cartridges and one case of rifles.

Q. Do you know what kind and size of rifles were included in the shipments of June 10, 1914, referred to in Plaintiffs' Exhibit A? A. 10 Model 8A, 25 calibre.

Q. Do you know the kind and size of rifles and cartridges included in the shipment dated June 18, 1914, referred to in Plaintiffs' Exhibit B?

A. 2,000 cartridges, 25 Remington metal case; 1,000 cartridges, 30 Remington metal case; ½ thousand cartridges, 35 Remington metal case; 1/5 thousand cartridges, 32 Remington metal case; 1/10 thousand metal cartridges, 30 Springfield, 0 3 metal case; and 10 model 14 A, 25 calibre.

Q. To whom was the case referred to in the Express Company receipt dated June 18, 1914, Plaintiffs' Exhibit A, consigned? A. John Mastell, Hartford, Arkansas.

Q. To whom were the five cases referred to in the United States Express Company receipt, dated June 18, 1914, Plaintiffs' Exhibit B, F. K. H., consigned?

A. Oscar Layton, Hartford, Arkansas.

(Signed) WILLIAM J. CLINTON.

3467 Plaintiffs' Exhibit "A"

United States Express Company.

Received from Remington Arms-Union Metallic Ctge. Company New York, N. Y.

Date

6/10/14 one (1) case John Mastell, Hartford, Arkansas Vose 492

Value $230.00

Plaintiffs' Exhibit "B"

United States Express Company.

Received from Remington Arms-Union Metallic Ctgl. Company New York, N. Y.

Date

6/18/14 Five (5) cases Oscar Layton, Huntington, Arkansas Voce 492

Value $300.00

The said JOHN J. MORRIS, being duly sworn according to law to tell the truth, the whole truth and nothing but the truth, in the above entitled cause, testified as follows:

Examination

By Mr. Kobbe:

Q. State your name? A. John J. Morris.

Q. Where do you reside? A. Great Neck, Long Island.

Q. Do you appear here pursuant to subpoena served upon you? A. Yes, sir.

Q. By whom are you employed?

3468 A. Remington Arms-Union Metallic Cartridge Company.

Q. What is the nature of your employment with the Reington Arms Company? A. Shipping clerk.

Q. As shipping clerk what are your duties?

A. To ship goods ordered by customers to them, to deliver the goods to transportation companies and receive the receipts from such transportation companies for such goods.

Q. I show you receipt dated June 22, 1914, of American Express Company, for two cases consigned to Lscar Layton, Hartford, Arkansas, and ask you in whose handwriting this receipt is made out? A. It was made out by me.

Mr. Kobbe: I offer in evidence this American Express Company receipt dated June 22, 1914.

The receipt is received in evidence and marked Plaintiffs' Exhibit C, F. K. H., June 18, 1915.

Q. To whom did you deliver the two cases referred to in the American Express Company receipt dated June 22, 1914, Plaintiffs' Exhibit C, F. K. H.?

A. American Express Company's driver.

Q. By whom is the receipt of American Express Company dated June 22, 1914, Plaintiffs' Exhibit C, signed?

A. By the American Express Company's driver.

Q. To whom were the two cases referred to in the American Express Company's receipt dated June 22, 1914, Plaintiffs' Exhibit C, consigned?

A. Oscar Layton, Hartford, Arkansas.

Q. Will you state the contents of the two cases referred to in the American Express Company's receipt dated June 22, 1914, Plaintiffs' Exhibit C, consigned to Oscar Layton, Hartford, Arkansas?

A. Contained 1500 cartridges, 25 Remington M. C.

3469 Q. At what place did you deliver the two cases referred to in the American Express Company's receipt dated June 22, 1914, Plaintiffs' Exhibit C, to the Express Company?

A. 29 Warren Street.

(Signed) JOHN JOS. MORRIS.

Plaintiffs' Exhibit "C"

American Express Company.

Received from Remington Arms-Union Metallic Cartridge Company, New York, N. Y.

Two cases (2) Consigned to Oscar Layton, Hartford, Arkansas. Charges C J. HOFFMAN. 2

Mr. Hull: I have a three page deposition to offer, of Thurman Looper, taken at Joplin, Missouri, August 1st, 1917; both sides being represented by counsel.

(Reading):

"THURMAN LOOPER, of lawful age, being first duly sworn, upon his oath, to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

By Mr. McDonough:

Q. State your name, please? A. Thurman Looper.
Q. Your initials are W. T.? A. Yes, sir.
Q. Where do you live? A. Webb City.
Q. Are you a son of O. T. Looper? A. Yes, sir.
Q. What do you do in Webb City?
A. Work in the mines.
3470 Q. What kind of work do you do in the mines?
A. Shoveling.
Q. In what mine are you working?
A. Hurry Up Mining Company.
Q. State whether or not you were living in Arkansas and near Midland, Arkansas, in 1914? A. I was, yes, sir.
Q. What were you engaged in while you lived in Arkansas in 1913 and 1914?
A. I was working in and around the mines.
Q. What kind of work did you generally [—] in the mines, or about the mines? A. I generally worked shift work.
Q. State whether or not you were employed by the Bates-Denman Companies about the time they were making an effort to open up Mine Number Four on the open shop plan?
A. I was, yes, sir.
Q. Who employed you? A. My father.
Q. What kind of work were you employed to do?
A. Guarding around the mine.
Q. State whether or not on Sunday the 5th of April, 1914, a committee composed of John Manick, Vesta Howard, Clint Burroughs and others came to you to talk to you, and did talk to you? A. Yes, sir.
Q. Give the names of all that you remember in that committee?
A. Vesta Howard, John Manick, Clint Burroughs, Charley Johnson; I believe that is all I can call to mind.
Q. Were those men union miners? A. Yes, sir.
Q. I wish you would state what they said to you?
A. Well, they was persuading me to quit work.
Q. What reason did they give you for wanting you to quit work?
A. Well, I don't know hardly how to answer that.
Q. Well, they knew you were working for the company, did they?
3471 A. Yes, sir.
Q. They knew the company was endeavoring to open up the mine on the open shop plan? A. Yes, sir.
Q. What did they say, if anything, about a meeting that was going to take place the next day?

A. Well, they told me they was going to have a meeting on the next day; that everybody in the surrounding country would be there.

Q. How many people did they say would be at that meeting?

A. I believe something like two thousand people was what they said.

Q. At what place did they say the meeting would be held?

A. They didn't say.

Q. Was anything said about a school house? A. No, sir.

Q. What was said by them, if anything, whether they were going to stop that work the company was then engaged in at that mine? A. They said they was going to stop it.

Q. State whether or not they said they would or would not have trouble?

A. They said they were expecting to have trouble.

Q. What did they [said] about the trouble, as to what it would be, or the nature of it?

A. Well, they didn't say about the nature of the trouble; they were insisting that I quit; they said they wouldn't like to see me there, and wished I would quit, so I wouldn't be there when this trouble occurred.

Q. Had you been a union miner before that?

A. Yes, sir.

Q. Were you a member of the union at that time?

A. No, sir.

Q. What did they say about your obligation to the union to quit, if anything?

A. Well, I don't remember whether there was any-
3472 thing said about that or not.

Q. Mr. Looper, state whether or not you did quit?

A. Well, I worked that day; they wanted me to quit at that time, it was about noon, and I refused to quit, but after my shift was off that day I quit that night.

Q. What was your reason for quitting?

A. Well, I didn't want to be there; I knew the trouble was coming, and I didn't want to be there when it come up.

Q. State whether or not you feared personal violence to yourself? A. I did, yes, sir.

Q. You were not working then on Monday? A. No, sir.

Q. Mr. Looper, did you work at those mines any time after that? A. No, sir.

Q. You were not there then at the time of the battle on July 17th? A. No, sir."

Mr. Covington: We waive the reading of the cross-examination.

3473 Mr. Drinker: If the Court please, we have found the missing volume of these old reports, and I have boiled down the extracts to five.

The Court: What reports are they?

Mr. Drinker: The joint conference of the miners and operators which was the missing volume that broke the chain. We have boiled it down to five, and I offer it in connection with that same line of testimony, at the point where the stenographer marked the record to have it inserted.

I now read from Exhibit 38, being the Joint Conference Reports for 1901, part of the remarks of Mr. Vogle, on page 59, being lines 13 to 15 of the second paragraph of his statement. "At the Chicago Convention the United Mine Workers' Organization agreed with the operators of the four states that they would bring West Virginia into the fold. Again at Pittsburgh they promised the same."

Mr. Warrum: The defendants separately renew all of the objections heretofore made to the introduction of debate or extracts from the joint conference reports, and this because, since the ruling of the Court, counsel has seen fit to present these printed volumes to their own witness, Mr. White, and ask him where the originals were from which these printed proceedings were made, and I believe that he testified that he supposed they were with the secretary of the two associations.

Mr. Drinker: He said he didn't know.

The Court: No, he said that is where they belonged, and ought to be, and he supposed they were there. There is no question about that. He stated very positively that
3474 is where they were.

Mr. Drinker: I think on the grounds that they were admitted in here as Mr. Green identified them all, includes this one.

The Court: I couldn't find it there.

Mr. Warrum: I couldn't find it in the Green deposition myself.

The Court: I will assume that it is there for the purpose of this objection, and the objection will be overruled. I still entertain some doubt as to all of this testimony, gentlemen. I will not feel that you are imposing on the Court at all, when the proper time comes, if you move to exclude it.

Mr. Drinker: From the joint conference, has your Honor reference to, or the minutes or everything?

The Court: I have reference to all of this.

Mr. Drinker: I will read from page 59,—that is the two or three lines that I have just read.

From the same volume on page 107, the remarks of Mr. Mitchell, the entire statement that is on page 107. (reading.)

"Mr. Mitchell: I don't know whether my conception of the relationship between ourselves and the operators is correct or not, but it appears to me that where we are jointly interested in advancing rates in other fields we ought to work together where we can. It takes money to organize. West Virginia coal is sold in competition with Pennsylvania and Ohio coal. This cannot be stopped until the miners there are organized; and it seems to me that it would be but fair for the operators to join this far, that they would try in
3475 every way in their power to help us organize these fields. We believe that as long as our organization is held responsible for the observance of every agreement that we enter into, that every man is employed by your companies should hold allegiance to the organization that is held responsible. I dare say that if the unorganized men in the Pittsburg District were to engage in a strike, that the Pittsburg Coal Company and the Monongahela Coal Company would call on our organization to enforce the rate. If I am not mistaken, that has been done."

From the same volume on Page 110, from the statement of Mr. Mitchell. (Reading.)

"Mr. Mitchell: There is no purpose on our part to deduct more from the miners than they are willing to pay, nor to deduct from men who are not able to pay. But there are many miners in the organization who fail to pay to the organization, and, as I said before, so long as we are obliged to carry out the agreements we should have your assistance to collect the money to carry them out. And further, I will say there are good reasons why you should contribute money to carry out these agreements. We do not ask you to do it, yet when we enter into a partnership of this kind there is no more reason why we should pay out our money than you should."

In the same volume, page 112, the remarks by Mr. Mitchell, Mr. Bogle, Mr. Purcell and Mr. Lewis. (Reading.)

"Mr. Mitchell: Does the operators' agreement end when he pays the rate of wages?

Mr. Bogle: Yes, his obligation begins and ends there.

Mr. Purcell: Would it not be a fact that the miners' obligation ended when he received his rate of wages?

Mr. Bogle: No, sir; he must perform his contract in
3476 order to get his wages.

Mr. Purcell: You still ask us to bring up the operators who are not paying that rate, You ask us to control competition.

Mr. Bogle: We don't ask you to do that at all, sir. We ask you to put your rate of wages at a point where we can operate our properties and live, as against the people who are not controlled. We say to you that until you do control, until you do bring them in here, you have no right to ask us such an ungodly price for everything you do for us, and put such onerous conditions upon us.

Mr. Lewis: I think this conference is getting to that point where we should strip every question clean of every sentiment. I believe when we do that we are getting to a point where we can discuss these questions as they affect our interests jointly, and from that point I for one, would like to know what the purpose is, and why we inaugurated what is known as the Joint movement in the four states represented? In asking that question I am going to answer the question as I understand the purpose why we met. And in doing so I am willing to assume as broad a position and stand on as broad a platform as any man in this hall, it matters not to me whether he represents the operators or the miners.

In the first place, as I understand it, we had something of a guerilla fight in the mining industry. Every operator was seeking to enter the market and sell a ton of coal against his competitors at whatever cost. In order for them to do that it was necessary for them to reduce the wages of the miners step by step, until it became a question with the miners of this country whether it was not as well to starve being idle as to
starve working. I am free to admit that under those
3477 conditions many of the operators went into bankruptcy.

If this be true, and I don't think that it can be questioned, then it was necessary, not only for the miners, but for the operators as well, to assume certain responsibilities to give stability to the mining industry. Realizing this we met in joint convention. We agreed on a certain scale for mining and every man, whether he was in the organization or out of

the organization, on our side of the compact was expected to adhere strictly to every term embodied in that contract. You know, and every man in the hall knows when the first compact was made that the miners of this competitive field were not as well organized as you, and we would both like to have seen them, in order that there would be no friction between us in the year following that argument. We have attempted to the best of our ability to adhere strictly to every agreement that we have entered into. It is true that we have asked—you may put it in the form of a favor if you please—and in some cases we have insisted that the operators would not only recognize the United Mine Workers as a business institution, but that they would go one step farther and help us compel the rebellious of our own ranks to be parties to the to this compact. Not for the benefit of the miners, but for the benefit of the miners and operators jointly. Now let us see how much farther this movement must go to be successful. As I understand it, it is for the purpose of wiping out competition between us as miners first, viewing it from our side of the question; next for the purpose of wiping out competition as between the operators in these four states. When we have succeeded in that and we have perfected an organization on both sides of this question, then, if I understand the real purpose of this outside of this competitive field who will do anything in
3478 any way endangering the peace that exists between us. What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned. Go into these outside competing fields and tell your competitors that they have to join this movement whether they like it or not, and give stability to the coal business of the United States."

From the same volume, being the same exhibit, but from the 1902 proceedings, joint conference proceedings, page 55, the remarks by Mr. Robbins, 14 lines from the bottom, through the same paragraph and on page 56. (Reading.)

"Four years ago, in the city of Chicago, we agreed to be in the advance guard on the question of an eight-hour day, with the distinct and absolute promise that unless our competitors were brought up to the same conditions that we would be put back where we were. And what is the result? None of our competitors have been brought up. In no place that we compete, that I know of, has an eight-hour day been established. We are competing constantly with operators that still have a ten-hour day. Their cost is proportionately less. Just before this interstate convention meets, possibly one or two months, a few of your men are sent down into West Virginia to organ-

ize that state. And you call that organization. I call it a simple blind attempt to make a show to present to the operators of this interstate conference, nothing else. You never expect to accomplish anything by such efforts. No sensible man could expect it; and the gentlemen on the other side of the house who are leaders are fully up to their position; and they never expected to accomplish very much in the way the at-
3479 tempt was made. But I am not here to plead that they should go into West Virginia and organize. I am not here to promise that we shall grant a check-off system. The miners are as vitally interested in that proposition as we, and when it comes it will hurt you worse than it will hurt us. If the members of your organization are not willing to pay their just and honest dues to your association, you should not ask the operators to deduct it from their wages."

Mr. Drinker: That is the extent of the extracts.

Mr. Warrum: We will cross examine now on this. Reading from the same volume, first on page 43, the rules governing assembly. (Reading.)

"Rules As Amended.

First. That the Convention meet daily at 9 a. m. and 2 p. m., and adjourn at 12 m. and 5 p. m.

Second. Special meetings may be held, or evening sessions, if so ordered.

Third. That the Miners' representative occupy the right side of the Auditorium, and the Operators the left, facing the stage.

Fourth. That each state be allowed the same number of votes on the floor of the house—four votes in behalf of the Operators, and four votes in behalf of the Miners of each state.

Fifth. That no vote be declared carried unless upon the affirmative vote of the Miners and Operators of each state. That upon all questions of mere procedure the ordinary rules of parliamentary procedure, as stated in any standard manual, shall be the rules of this convention; and that in no event shall the rule requiring unanimous vote on all main and principal questions be suspended. Main and principal questions mean all qustions affecting the proposed scale and agree-
3480 ment.

Sixth. That each state represented in the convention have four Operators and four Miners on the Scale Committee, to be appointed with the understanding that each state may

have an alternative for each representative, who shall have all the privileges of the Scale Committee, but shall have no vote except in the absence of his principal.

Seventh. That sessions of the Joint Convention be opened to the public, except when otherwise ordered.

Eighth. That the use of tobacco be prohibited in the Auditorium during the Convention.

(Signed) THOMAS JOHNSON, Chairman,
JAMES CANTWELL, Secretary."

Mr. Warrum. The next is the report of the Committee on Credentials, found at the top of page 45. (Reading.)

"Mr. W. D. Ryan presented a list of Miners' delegates from District No. 12 Illinois, showing a total of			173
Mr. Wm. Dodds list of Miners, District No. 5, Pittsburg,			77
Mr. J. H. Kennedy, list District No. 11, Ind. Bitum.			82
Mr. Harry Wright, District No. 6 Ind., Block.			20
			102
Mr. G. W. Savage, list District No. 6 Ohio			147
Total miners			499
Mr. F. L. Robbins, list Pittsburg, Pa., Operators,	16		
Mr. J. S. Morton, list Ohio Operators,	60		
Mr. Phil Penna, list Indiana Operators,	32		
Mr. Scroggs, Secretary, list Illinois Operators	74	182	
			681

(Signed) J. S. MORTON, Chairman,
G. S. SAVAGE, Secretary.

A motion was made and seconded that the report of the
3481 Committee on Credentials be accepted."

Mr. Warrum: On page 69, from an argument made by Mr. John Mitchell. (Reading.)

"Now, gentlemen, there is one reason, and I think a good reason, why the miners should not be called upon to discuss West Virginia production. While we are prepared to show that since the last convention the rates of mining were materially advanced in West Virginia, in making an argument against the other states in favor of West Virginia, our own arguments are used by the Operators there to curtail our efforts in organizing that field. Every time the Operators have compelled us to discuss West Virginia, the Operators down there have taken our own arguments and used them to prevent us organizing the men. But, inasmuch as the question has been raised, I want to say the advance paid in West Virginia in the Kanawha district was as much as the advance paid in Pennsylvania. The fields where we have been unable to advance the mining rate are the mines where the Operators employing Union labor in other states and treating with our organization here are developing mines. We had the names of them here."

Mr. Warrum: On page 74, from the remarks of Mr. Lewis. (Reading.)

"What we want is a mine-run system to begin with; what we want after is to determine on a price for mining on that basis. I think that covers in its entirety all the questions pertaining to a mine-run system. It is acknowledged that West Virginia has a mine-run system, by the gentlemen who have interests in Ohio and in West Virginia. It is acknowledged that in West Virginia they can pay for coal on a run of mine-basis, that they have no objections to it there, and yet those same people make the statement that West Virginia is coming into
3482 competition with Ohio and the other states in the competitive field and ruining their trade. Where is the consistency in that position? I will tell you where the consistency is, to some extent. The consistency lies in the fact that the men who are producing coal in Ohio on a screened coal basis are producing coal in West Virginia on a mine-run basis, and they come to our joint conferences and tell us that, owing to competition from West Virginia, they cannot hold their trade, and they are competitors with themselves. They fight our organization just as hard in West Virginia, if reports I get are true, as any other Operators in that state. I will tell you why; they do not want that state organized. If we get West Virginia organized we will not permit a change in the system of mining in that state, and it may be just as well understood no was at any other time; and if we secure a foothold in that state the Operators in the other states in the competitive fields will know that their arguments are gone, so far as establish-

ing a mine-run system is concerned. They know it, and that is why there is so much opposition to organizing that state.

I have heard West Virginia competition spoken of so much, and, while I confess I haven't the actual figures as to the amount of coal shipped from West Virginia in competition with these districts, I will make a general statement that, in my opinion, the increased production in West Virginia during the past year has been taken up by these people to export coal, and I don't believe it has interfered with Pennsylvania or Indiana or Ohio to any extent during 1900. In the Hocking District and in every other district in Ohio, and in the Pittsburg District, the mines have worked better during the past year than they worked in 1899. That is a general
3483 statement, and I don't believe it can be contradicted."

Mr. Warrum: And on page 79, of the same report, colloquy between Mr. Ryan, Mr. Mitchell and Mr. Robbins. (Reading.)

"Mr. Ryan: I understood Mr. Mitchell to qualify the statement so as to cover the ground you take.

Mr. Mitchell: I cannot permit that statement of Mr. Robbins' to go without a correction. I said "consistent with trade union conditions."

Mr. Robbins: Did you mean outside trade conditions?

Mr. Mitchell: I meant competitive conditions. I spoke for myself, and said so far as I was concerned I was certain I wanted the miners to have the last farthing they could get, consistent with trade conditions. I presumed you understood me to mean that if there is a certain amount of profit accruing to the industry we want our share of the profits to the last penny. I don't think my reputation would justify the charge that I had ever been narrow in discussing trade conditions.

Mr. Robbins: I do not want to do Mr. Mitchell any wrong, but there has been an effort to say that West Virginia should not be considered. The outside conditions have not been met in the past, they are not going to be met in the future; they are vital to our interests, and I think they should be considered and discussed."

Mr. Warrum: Statement in debate by Mr. Van Horn, a miner, of Pennsylvania, on page 107. (Reading.)

"Mr. Van Horn: It looks to me very much as though we couldn't agree on this proposition, and if we cannot, I don't know of any proposition we can agree on. It looks very
3484 strange to a miner on this side of the house to hear the company from the Pittsburg District complain about

the West Virginia people not being brought into the organization; and almost in the next breath refuse to assist us in any way. The argument made by our friend from Pennsylvania in regard to the law is a very poor argument. We had in Indiana, I presume, about the same law, and we protect the operators and we make everything good that the operators lose where they complain to us of these matters."

Mr. Warrum: Statement on page 110, the conclusion of the statement of Mr. Mitchell, the first part of which was read by plaintiffs. (Reading.)

"We simply ask you to check off the amount of money our members are willing to pay. You check off for your stores, for your blacksmiths and for everybody else about the mines; and as for getting an order you comply with the law, and I dare say in Indiana, Ohio, Illinois and Pittsburg there are people who deal in your stores, there are others who go somewhere else, and while you don't discharge them for not dealing in the stores, the mere fact that you own the stores, and the statement of Mr. Robbins that you sell as cheap and that the goods are of as high a quality as they can get elsewhere, and that you think the men should deal there, is an evidence that men are dealing there who probably would prefer to deal somewhere else. The miners have a right to spend their earnings where they choose. If I am not mistaken it is contrary to the laws of Pennsylvania for you to own stores, and yet you do own them, and run them."

Mr. Warrum: And on page 113 following the portion read from the statement of Mr. Lewis. (Reading.)

"We don't ask you to go into these competing fields to
3485 organize the operators. We don't want to ask you as parties to this contract to bring the operators into the joint conference. You say to us, however, notwithstanding we have not made these demands of you. "Before we will consider any propositions coming from the United Mine Workers in this competitive field you must go into West Virginia, you must go into Central Pennsylvania, you must go into the Irwin field, and you must go into every other mining state in this country and establish an eight-hour day and establish the same conditions in those states as prevail in the four in the interstate joint movement. We have no objection to the gentlemen on the other side of the house making demands of this kind; but when they go one step farther and say that this is an organization wholly and solely for the purpose of maintaining certain prices and certain conditions in these four states, and that we must keep our forces at

work in these four states in order to enforce an agreement we have made at the beginning of the year, we think they have taken a wrong position."

Mr. Warrum: On page 134, statement by Mr. Mitchell from the larger statement in the course of debate. (Reading.)

"It appears to me that if there was not competition from West Virginia to use as a justification of the proposition of the Operators, that there would be some other state they would refer to as a justification for asking for a reduction or refusing to pay an advance.

The output of coal in Illinois and Ohio each increased more than it did in West Virginia last year. Ohio increased its output 2,000,000 tons; Illinois increased more than 2,-
000,000, and Pennsylvania increased 10,000,000 tons.
3486 The mining rate in the Kanawha District advanced as
many cents as the mining rate in Ohio. It is true that the Fairmount region has not been brought up as high as the thin vein scale in the Pittsburgh district; but it must be borne in mind that coal mined in the Fairmont district is sold in competition with the thick vein coal of the Pittsburg district. The conditions of mining in the Fairmount district are similar to those in the thick vein in Pittsburg, with the possible exception that there is less dead work in the Fairmount region.

Another feature should be given consideration in this discussion of the mining price. Out of a total increased machine production of 12,000,000 tons last year nearly Ten million of it was mined in the competitive field, and in the Pittsburg district and in Ohio and Indiana that coal is mined at 12-½ cents less than the pick price of mining. The cost of production has been decreased materially in those states where they have introduced so many mining machines and increased their output so much. In comparing the prices of West Virginia you would have to compare machine prices against pick prices. In the Hocking Valley all the coal is mined by machinery, and a large amount of it is mined by machinery in the Pittsburg district.

In my opinion the Miners have presented arguments in favor of some changes in the present mining scale that up to now remain unanswered. They have asked for a scale for outside day labor, they have asked for a run of mine system. they have asked for uniformity all over the country in that respect at least, and the refusal has come from our partners in this agreement."

Mr. Warrum: Now, the scale,—the first quotation on page 158 and 159, from the argument of Mr. Reese, a miner
3487 from Iowa. (Reading.)

"The argument about West Virginia competition is all right, but you lose sight of one fact. Let us admit that they produce coal in the Fairmount region by the car. In December I was in that state, and I heard that the price paid was 42-½ cents a car, and each car held an acre of coal. That is the competition that Western Pennsylvania and Ohio has to meet. Does not it necessarily follow that if we reduce the price ten cents a ton they would reduce it ten cents per acre? You say there is no organization there and the operators control the situation entirely. Then it necessarily follows that, no matter how long we go down, they will simply go us one better. That is true of every unorganized state or district in the union. If we would reduce the amount ten cents this year, or any other amount, when we met you a year hence you would say the competition was more severe than last year, and you would meet another reduction. If that isn't true, how have you been able to give three advances within the past three years? Are not West Virginia and Central Pennsylvania and Iowa and Missouri and a lot of other states producing coal? Every time you bettered the condition of the miners in the competitive field the outside districts came up with you. Nobody else had the eight-hour day until it was agreed in this field that we should have; nobody else got advances until they were granted here, and you have not heard of any reduction being made in the outlying districts while you have been giving advancements. If we agreed to dig coal for 20 cents per ton, the West Virginia miners, according to your statement, would accept a greater reduction. The operators tell us to bring them into the competitive field. We don't know whether you would ac-
3488 cept them or not. You told us to bring others here, and we brought them, and you kicked them out. Take in those that are knocking at your door and let them join hands with you and help bring in West Virginia. One operator said all he wanted in West Virginia was just as good conditions as his competitor. He should be a little broader than that. If he finds that it pays to deal jointly in Ohio, why not set the example for his fellow operator in West Virginia? Why not say to our organizers when they go there, "You can organize my men; but you certainly won't expect an advance from me until you get my competitors on the same basis." If the operators who are interested in West Virginia and in the competitive states would give us a help-

ing hand we could organize West Virginia within the next twelve months. When we go there we find them just as bad, and they admit it here, as their competitors. That means that if one of the other operators in West Virginia will get an injunction out against one of our organizers he will do the same."

Mr. Warrum: Also a statement, another remark by Mr. Mitchell, on page 159. (Reading.)

"Mr. Mitchell: It seems to me the miners are going to be compelled to confine their remarks principally to the question of West Virginia competition. While the operators complain very much of that competition, and refer to the enormous increase of West Virginia coal, they have failed to explain the reason for it. There have been large shipments of West Virginia coal in all the markets where there is a large population; but in my opinion that is largely accounted for by the fact that ordinances require that the consumers in those cities must use smokeless coal or use smoke consumers.

I believe a large part of West Virginia coal is sold for
3489 consumption in the large down town buildings because of its making a less amount of smoke. This is true to some extent."

Mr. Warrum: Finally, the scale agreed upon, found in this Exhibit on Page 178, signed by the miners and operators. (Reading.)

"Columbus, Ohio, February 9th, 1901.

In accordance with the action of the Joint Convention of Miners and Operators held in Columbus, Ohio, January 31st, to February 9th, 1901, this agreement and the prices and conditions thereby fixed, are renewed and continued in force for the year from April 1st 1901 to April 1st 1902.

In behalf of the Operators:	In behalf of the Miners:
For Thin Vein District of Pennsylvania -	For Thin Vein District of Pennsylvania -
Geo. W. Schulederberg, O. A. Blackburn,	P. Dolan, William Dodds.
For Ohio	For Ohio
Thos. Johnson, W. J. Mullins,	W. H. Haskins, D. H. Sullivan.

For Block District, Indiana	For Block District, Indiana
Jas. H. McClelland, W. W. Risher,	William Wilson, Harry Wright
For Bituminous District, Indiana	For Bituminous District, Indiana
W. S. Bogle, P. H. Penna,	J. H. Kennedy, W. D. Van Horn
For Illinois	For Illinois
H. N. Taylor, A. J. Moorshead.	Jno. M. Hunter W. D. Ryan.

On behalf of the United Mine Workers of America:

3490 JOHN MITCHELL, President.
T. L. LEWIS, Vice President.
W. B. WILSON, Secretary-Treasurer.

Attest: W. B. Wilson, Secretary.'

Mr. Warrum: Now, in the same exhibit, from the published proceedings of the Interstate Convention held at Indianapolis January 30th to February 8th 1902, on page 64, from the statement of Mr. Mitchell. (Reading.)

"What is true in Indiana and Illinois is also true of Ohio and Pennsylvania. The increase in their production has kept pace with the increase in the other states. The facts of the matter are the reports from West Virginia indicate that the selling price for coal from their mines increased more during that period than elsewhere, showing that if they increased the price at the mines they must have reduced the keen competition in the markets. I do not think, therefore, that this year the operators can afford to come in here and speak of West Virginia production for their refusal to advance prices. It seems to me that when anyone quotes loss of tonnage in one market they might give reasons for it, and if there are greater inducements offered in another market, and he can secure that market, an operator will send his coal there. An operator will not sell his coal in Chicago when he can sell it somewhere else at higher prices."

Mr. Warrum: And on page 77. (reading.)

"Mr. Mitchell: I want to call attention to one feature of the coal trade that I think will have some bearing on the Illinois situation. Mr. Taylor said they were losing in the Chi-

cago market; that the trade was going to West Virginia.
3491 The reports indicate that West Virginia got eighteen cents a ton more at the mines than they did prior to that time. As a consequence, the competition would be less keen than prior to that time.

Mr. Taylor: As West Virginia is not represented here, and they know they are being attacked, it would be good policy for them to show figures to stop the attack on them. Their argument is fixed up for the occasion.

Mr. Mitchell: We are perfectly satisfied to drop West Virginia altogether, all around."

Mr. Warrum: And on page 80. (Reading.)

"Mr. Mitchell: I note Mr. Chapman's statement about their loss of markets in Ohio to West Virginia coal. He named several cities in which those markets were lost. I don't think the selection of a few cities is a good argument in favor of a reduction in the price of mining. Mr. Chapman sent coal to Illinois and sold it in a town where they had a mine, and closed the mine down. I suppose West Virginia coal is going into the cities he names, not because of their ability to sell coal cheaper, but because the people there want that kind of coal.

Mr. Peabody: Do you believe there is an operator in the room who could not duplicate Mr. Chapman's statement in other towns? I can cite five or six towns. He is simply bringing the point home in his own particular mind.

Mr. Mitchell: If West Virginia coal is taking all of those markets, I want to know what they are doing with Ohio and Illinois coal. I find in the year 1900 there was an increase of two million tons, as compared with 1899. I haven't the figures for 1901. There has been an enormous increase, notwithstanding the fact that West Virginia increased
3492 the cost of their coal in the mines.

Mr. Chapman: West Virginia's increase for the same period—for the year ending 1901—was large.

Mr. Mitchell: In that same period the machine mined coal of Ohio increased two million tons. The increase on their tonnage has been all on machine mined coal. That, possibly, accounts for the ability of the Ohio operators to decrease their prices and not decrease their profits."

Mr. Warrum: On page 81, a statement of Mr. Lewis.

(Reading.)

"Mr. Lewis: While we acknowledge that there has been an increase in the production of coal in West Virginia, that increase has not come west. It has gone east. We made that statement a year ago, and the operators who were not prepared to refute it, and they are not prepared to refute it now. We have not had time to go and copy the exact data; but the railroad people say there was a less tonnage going over these two Ohio bridges in 1901 than in 1900. This talk about West Virginia competition, if it had really transpired, as our operators on the scale committee have argued for the past four years that it has, would have prevented the production of a pound of coal in Pittsburg, Illinois, or the rest of the states. There are operators in Ohio and Illinois, and in every other state, that are interested in West Virginia coal, and those are the men that are bringing that coal west, moreso than the operators whose exclusive interests are in West Virginia. These latter are shipping their coal, east. And, further, any attempt to organize the men who are mining the coal shipped west is being met by sterner competition by the interests who produce coal in Ohio than by
3493 the man in West Virginia who own coal mines and ship east. Then they talk to us about organizing those men! Some of the things that could be related about the happenings in West Virginia would be a shame to go into print. It would certainly make the hair raise on some of your heads—those who have hair on the heads; I am losing mine—and I want to say in all fairness that the only way to discuss this matter is to get at the figures. We are not prepared to give the figures, anymore than you are. We get the facts from the railroad people."

Mr. Warrum: On page 85, another statement by Mr. Lewis. (Reading.)

"I think it will only be a short time before these interests are so welded together that when we are treating with one we are treating with the other. I don't think the time is far distant when, in treating with people in Ohio, we will find we are treating with West Virginia operators right here in the scale committee. If that is true, it is unfair to come in—well, I shall withdraw the word "unfair"—and it is injudicious to come in here and make arguments against men who are representing West Virginia."

Mr. Warrum: You waived anything from the next conference?

Mr. Drinker: I offered nothing from that.

The Court: It is now time that we should take our usual adjournment.

We will now stand adjourned until tomorrow morning at 9:30 o'clock.

3494 Fort Smith, Arkansas.

Saturday November 10, 1917, 9:30 o'clock A. M.

Pursuant to adjournment as last aforesaid came all of the parties as before on Saturday, November 10, 1917, at 9:30 o'clock and the trial of the cause proceeded further as follows:

H. O. LEWIS, recalled as a witness in behalf of the plaintiffs, having been previously sworn, testified further as follows:

Redirect Examination

By Mr. Drinker:

Q. Mr. Lewis, you are the engineer for the Bache-Denman Companies. A. Yes, sir.

Q. I hand you a paper which has been marked Plaintiffs Exhibit No. 164 and will ask you what that is.

A. That is a map of Prairie Creek Mine No. 3 and 4.

Q. Showing the underground workings? A. Yes, sir.

Q. Did you make this map yourself?

A. I made a part of it myself and a [paort] of it was made of my assistants. It was made under my direction and supervision.

Q. Is it a correct representation of those workings?

A. Yes.

Mr. Drinker: We offer Exhibit No. 164 in evidence.

Q. I now hand you Mr. Lewis, a map which has been marked Plaintiffs Exhibit 165. Does this represent the workings in July, 1914?

A. It represents the last survey which was made just a very short time prior to that, within a couple of weeks.

Q. What is Plaintiffs Exhibit No. 166?

3495 A. That is a map of the underground workings of Coronado.

Q. Was that made under your supervision? A. Yes.

Q. And is it a correct representation of those workings?

A. Yes.

Q. As of what date

A. As of the time it was shut down. I cannot tell just when the survey was made. Probably a few days or a month before. It is practically correct.

Q. Does it show the workings as it existed in July, 1914?

A. Yes.

Mr. Drinker: We offer exhibit 166 in evidence.

Q. What is your next map?

A. That is of the Mammoth Vein mine.

Q. I hand you this map which has been marked Plaintiffs Exhibit No. 167 and ask you what that is.

A. That is a tracing or map of the Mammoth Vein mine. The map also includes the Hoffman, but the Hoffman on there is not up to date.

Q. Is the Mammoth Vein up to date A. Yes.

Q. Was this made under your supervision?

A. Yes, but some of the workings, those strip pit workings here (indicating), that has been put on since, known as the Elmira Mine.

Q. I wish you would mark a ring around the place you say has been put on later.

A. All right. (Witness marks a ring with pencil around the point designated.)

Q. As of what date is this a correct map of Mammoth Vein No. 1?

A. The last survey was made July 21, 1913, the last general survey, and the—

Q. Is that a correct general representation of those workings? A. Yes.

3496 Mr. Drinker: I offer Exhibit No. 167 in evidence.

Q. What is the next map, Mr. Lewis?

A. The Dallas Mine—it is known as the Dallas Mine, on the Hartford land.

Mr. Drinker: That map is marked Plaintiffs Exhibit No. 168.

Q. Was that map under your supervision?

A. Yes.

Q. Is that a correct representation of the underground workings of the Dallas Mine in July 1914?

A. Yes, except this encroachment which we used this as a tracing for, and I have put a ring around that, that was put on since.

Q. If that were eliminated, that would be a correct representation of the mine as of that date? A. Yes.

Mr. Drinker: We offer in evidence Plaintiffs Exhibit No. 168.

Q. What is the next?
A. The next is Mammoth Vein No. 6, being the workings on the McKitchen lease.
Q. Is that a correct representation of those workings as of July 1914?
A. Yes, eliminating the red, which indicates the workings done since by another company.
Q. Eliminating the red it is a correct representation?
A. Yes, then it shows the mine as it was when the Midland took it.
Q. Was that made under your direct supervision?
A. Yes.

Mr. Drinker: This map has been marked Exhibit No. 169 and we now offer it in evidence.

Q. Mr. Lewis, what is Exhibit No. 170?
A. Exhibit No. 170 is a map of the Hoffman Mine, the last record we have as turned over by the Central, on the date it was given up by them, that is, it shows the last work done in the mine.
3497 Q. Was that made under your supervision?
A. A part of it was made under my supervision and a part of it was copied from a map turned over by the Central Coal & Coke Company to the Bache-Denman Company.
Q. Have you checked up those points?
A. Yes, I went through it at the time it was shut down and practically there is no mistake in it. I have relied on the Central engineers' data for some of the workings, but it is a true copy of their map.

Mr. Drinker: I offer in evidence Plaintiffs Exhibit No. 170.

Q. Now, what is this big map?
A. That is a general map showing the towns of Midland, Hartford, Huntington and the different mines of the Bache-Denman Company; and the roads, and showing the general relation of these towns, mines and land.
Q. It is a surface map? A. Yes.
Q. Did you make that map? A. Yes.
Q. Is that a correct representation as of July 1914?
A. Yes, as of any time; it is a surface map. It is simply to show the roads between the towns and the general location of the different properties.

Mr. Drinker: We offer in evidence Plaintiffs Exhibit No. 171.

I want to show this big map to the jury. It is Exhibit No. 171. (Map held up in front of jury and shown to them.)

Q. Mr. Lewis, the blue line, the line with the perpendicular blue mark on it represents the railroad?

A. Yes, and this line shows the outcrop (indicating).

Q. Which is north on this map?

A. This is north (indicating).

3498 By The Court:

Q. What is the scale of that map?

A. The scale is one mile to one foot.

By Mr. Drinker:

Q. Are these sections? A. Yes.

Q. How big are those sections?

A. They are a mile square; they are one foot square on the map. This comes on the range line (indicating). Down here (indicating) the sections are nearly two miles long. In order to fill up this vacant place down here they ran the sections clear through.

Mr. Drinker: You may cross-examine.

Mr. Covington: No cross-examination.

(Witness excused.)

Mr. Drinker: If the Court please we offer in evidence the decree of this Court in Coronado Coal Company, et al, vs. Sebastian County Coal Mining Company, et al, dated March 10th, 1915, this being a decree in which these leases were declared forfeited marked Plaintiffs Exhibit 172, as follows: (Reading.)

"In The United States District Court,
For The Western District Of Arkansas,
Fort Smith Division.

Coronado Coal Company, et al, Plaintiffs,
vs.
Sebastian County Coal Mining Co., et al, Defendants.

Order.

On this the 10th day of March, 1915, this cause coming on for final determination upon the application of the de-
3499 fendant Sebastian County Coal & Mining Company to cancel and annul the lease to the following described

real estate in Sebastian County, Arkansas, held by the Mammoth Vein Coal Mining Co. one of the plaintiffs herein:

"Southwest diagonal halves of Lots Eight (8) and Fourteen (14), Lots Three (3), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Seventeen (17) of the North Half (N-2) of Section Two (2), and Lots Seven (7) and Fourteen (14) of the North Half (N-2) of Section Three (3), Township Four (4) North, Range Thirty-two (32) West, containing three hundred sixty (360) acres, be the same, more or less;

Said lease being a lease executed on the 10th day of July, 1905, by the American Smokeless Coal Company to the Mammoth Vein Coal Mining Company for a term of thirty years from August 1, 1905, said lease now being owned by the defendant, the Sebastian County Coal Mining Company,

And upon the application of the defendant Sebastian County Coal Mining Company to cancel and annual the lease to the Prearie Creek Coal Mining Company to the following described lands in Sebastian County, Arkansas:

Lots one(1), two (2), nine (9), eleven (11) and twelve (12), Section One (1); Lot Seven (7) and the Northeast diagonal halves of Lots Eight (8) and Fourteen (14), Section Two (2), all of Lot ten (10), except the North two hundred and eighty (280) yards thereof and that part of said Lot West of the Midland Valley Railroad right of way, in Section one (1); all in Township Four (4) North, Range Thirty-two (32) West; and three (3) acres, more or less, out of the West side of Lot Two (2), Section Six (6), Township Four (4) North, Range thirty-one (31) West, being all of said lot West
3500 of James Fork Creek; being three hundred and forty-eight and forty-eight hundredths (348.48) acres, more or less, which the lessor owns in fee simple; and

The North two hundred and eighty (280) yards of lot ten (10), Section One (1), Township Four (4) North, Range Thirty-two (32) West, and that part of said Lot West of the Midland Valley Railroad right of way, being twenty-five and one-tenth (25.1) acres, more or less, in which the Lessor owns the mineral right; and,

Lots three (3), four (4), five (5), six (6), seven (7), eight (8), thirteen (13) and fourteen (14) Section One (1), Township Four (4) North, Range Thirty-two (32) West, being three hundred and thirteen and Twenty-six hundredths (313.26) acres, more or less, which the Lessor holds under a coal lease for a term of twenty years from May 31, 1900;

said lease having been executed to the Prairie Creek Coal Mining Company by the Cherokee Construction Company on the 18th day of June, 1906, and said lease being now owned by the defendant Sebastian Coal & Mining Company;

And upon the application of the defendant Sebastian County Coal & Mining Company to cancel the lease to the following described property executed to the Mammoth Vein Coal Company, said lease now being owned by the Sebastian County Coal & Mining Company;

The Southeast Quarter (SE/4) of Section Thirteen (13), Township five (5) North, Range Thirty-two (32) West, Sebastian County, Arkansas, except one (1) acre of said land in square form upon which the dwellings and adjoining buildings of the Bishops are situated, upon which lease Mine #6 of the Lessor is situated; and,

3501 The Northeast Quarter (NE/4) of Section Thirteen (13), and the North half (N/2) of the Northwest Quarter (NW/4), and the North Half (N/2) of the Southeast Quarter (SE/4) of the Northwest Quarter (NW/4) of Section Thirteen (13), Township Five (5), North, Range Thirty-two (32) West, Sebastian County, Arkansas, except one (1) acre of said land in square form upon which the dwellings of Araminta Bishop are situated; and,

The West part of the Northwest Quarter (N"W/4) of the Southwest Quarter (SW/4) of Section Eighteen (18), Township Five (5), North, Range Thirty-one (31) West, lying west of the center of James Fork Creek, containing Thirty (30) acres, more or less, in Sebastian County, Arkansas, except one (1) acre of said land in square form upon which the dwellings and buildings of the Bishops and Andersons are located.

On this day the defendant Sebastian County Coal and Mining Company having offered in open court and in writing to waive any and all claims and demands of every kind whatsoever which they might hold or claim to hold against the Receiver in this cause, or against the Lessees, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company, the Prairie Creek Coal Mining Company, under and by virtue of the covenants contained in the several leases executed to the aforesaid three companies, and the court having heretofore taken testimony upon the said applications of the defendant Sebastian County Coal & Mining Company, the court being well and sufficiently advised in the premises finds that it is not advisable for the Receiver to adopt the aforesaid leases, and further finds that the Prairie Creek

Coal Mining Company, Mammoth Vein Coal Mining Company and Mammoth Vein Coal Company are insolvent and are unable to perform and carry out the covenants of the said leases owned by them respectively, and the court
3502 further finds that it is to the best interests of the estate now in the hands of the Receiver that the offer of the defendant Sebastian County Coal & Mining Company releasing any and all claims of whatsoever kind and character which they might hold or claim to hold against the said Prairie Creek Coal Mining Company, Mammoth Vein Coal Company and Mammoth Vein Coal Mining Company be accepted.

It is therefore, by the court considered ordered and adjudged that the Receiver be and he is hereby directed to surrender to the defendant the Sebastian County Coal & Mining Company the possession of the property described in said three leases free from any and all claims of said Lessees or the Receiver against the Sebastian County Coal & Mining Company, and it is considered ordered and adjudged that the leases now held by the Prairie Creek Coal Mining Company, the Mammoth Vein Coal Mining Company and the Mammoth Vein Coal Company, as aforesaid, be and the same are hereby cancelled and annulled, and the right to the possession of said property from and after this date, and the title thereto, together with all appurtenances thereunto belonging, so far as the claims of any of the said Lessees or the parties to this suit are concerned, as against the Sebastian County Coal & Mining Company is hereby forever quieted in the Sebastian County Coal & Mining Company; [Procided,] that any and all claims and causes of action of the said Lessees against other persons for damages and injury to said property and said Lessees and leaseholds as heretofore done, shall remain in the said Lessees or the Receiver for the benefit of said Lessees, the Court herein reserving the right to mak all proper and necessary orders for the prosecution of said suit or suits for the recovery of said damages.

It is further ordered that upon the delivery of the pos-
3503 session of the above described property and real estate to the defendant Sebastian County Coal & Mining Company, that all claims and demands between the Sebastian County Coal & Mining Company, and any of the parties to this action, shall be and the same are forever settled; Provided, that any right, claim or action that the Lessees may have against third persons for the injury to or destruction of the property embraced in said leaseholds shall in no wise be affected by this order. It is further ordered that

each party hereto the Receiver and Sebastian County Coal and Mining Company, pay all costs incurred by him or it, and this cause is dismissed as to said Sebastian County Coal and Mining Company.

(Signed) FRANK A. YOUMANS,
Judge.

Filed March 10, 1915. Wm. S. Wellshear.

Appearance:
James B. McDonough,
Kimpel & Daily."

3504 Mr. Drinker: If the Court please we now offer in evidence the decree of this Court dated September 4, 1915, in the case of Coronado Coal Company, et al, plaintiffs, versus Sebastian County Coal Company, et al defendants, No. 246, Equity, Plaintiffs Exhibit No. 173. This Sebastian County Coal & Mining Company is different from the Sebastian County Coal Company. It is a subsidiary of the Cherokee Construction Company. (Reading.)

"Coronado Coal Company, et al. Plaintiffs,
No. 242 vs. Equity.
Sebastian County Coal Company, et al, Defendants.

On this the 4th day of September, 1915, same being a day of the June term of this court, came on to be heard the petition of T. W. M. Boone for cancellation of a lease on certain land lying and being in the Greenwood District of Sebastian County, Arkansas, in which said lease T. W. M. Boone and Ella Boone, his wife, were grantors, and the Prairie Creek Coal Company was grantee, and which said lease had been transferred by various conveyances until it is at this time held by the Coronado Coal Company and the Sebastian County Coal Co.

Said Petition alleged the failure of the said Coronado Coal Company or the Sebastian County Coal Co. or those under whom they held, to keep the covenants and conditions of said lease, and alleged that there was due the said T. W. M. Boone, Lessor, royalty under said lease in the sum of Two Thousand Four Hundred Thirty-six and 69/100 ($2436.69) Dollars, which said royalty was long past due, and said
3505 petition alleged that by the terms and conditions of said lease the said T. W. M. Boone had a lien upon all the buildings, improvements and machinery on the said premises owned or controlled by the said Coronado Coal Company, and the Court finds the facts to be:

That the said T. W. M. Boone did on the 13th day of January, 1903, made a lease upon

The West half of the Southeast quarter of the Northwest Quarter (W½ SE¼ NW¼), and the Southwest Quarter of the Northwest Quarter (SW¼ NW¼), which lies North of Cherokee Creek, and the South twenty-three acres of the Northwest Quarter of the Northwest Quarter (S. 23 acres of NW¼ NW¼) all in Section twenty-seven (27), and the East half of the Northeast Quarter (E½ NE¼), the East half of the Northwest Quarter of the Northeast Quarter (E½ NW¼ NE¼), the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) North of Cherokee Creek, and the East half of the Northeast Quarter of the Southeast Quarter (E½ NE¼ SE¼), all in Section twenty-eight (28), Township Five (5), North, Range thirty-one (31) West. lying and being in the Greenwood District of Sebastian County, Arkansas to the Prairie Creek Coal Company.

That the said lease was duly recorded on the 16th day of January, 1903, in Record book 31 at page 5 in the Recorder's office at Greenwood, Arkansas.

The Court further finds that by certain mesne conveyances the said leasehold came into the possession of the respondent, the Coronado Coal Company, and that the said Coal Company operated a coal mine located upon the said above described premises, and that by the terms of said lease, the said Lessors were to receive a royalty of five cents
3506 per ton on all coal taken from the said leased premises, and a minimum royalty of Twelve Hundred ($1,200.00) Dollars per annum; and

The Court finds that no royalty has been paid to said Lessors for royalty according to the terms of said lease since December 1913, and that there is now due said Lessors for royalty under said lease the sum of Two Thousand Four Hundred thirty-six and 69/100 ($2436.69) Dollars;

The Court further finds that the mining plant located upon said property has been destroyed, and that the said Coronado Coal Company is insolvent and unable to further continue the operation of said mine or to rehabilitate said property; and

The Court further finds that under the terms of said lease that the said Lessors have a lien upon the building, improvements and machinery on said leased premises owned and controlled by the said lessees; and

The Court further finds that the terms of said lease have been violated, and that the prayer of the Petitioner for the cancellation of said lease should be granted.

The Court further finds that the value of the buildings, improvements and machinery now on said leased premises is less than the amount of royalty due the said Lessors.

It Is Therefore by the Court considered, ordered and adjudged that the prayer of the Petitioner be granted and that the said lease executed on the 13th day of January, 1903 by the Petitioner T. W. M. Boone and Ella Boone, his wife, upon the above described real estate, be, and the same is hereby cancelled, set aside and held for naught, and that the said Lessors have a lien upon all of the buildings, improvements and machinery located upon the said leased premises owned or controlled by the said Coronado Coal Company or
3507 the Sebastian County Coal Company for the payment of said royalty, and the Receiver of the said Coal Companies is hereby authorized and instructed to turn over and deliver to the said T. W. M. Boone or his legal representatives possession of the above described premises together with all the buildings, improvements and machinery belonging to the said Coronado Coal Company or the Sebastian County Coal Company located on the said leased premises, and the said T. W. M. Boone is hereby instructed that if, after disposing of said buildings, improvements and machinery, as above set out, there should remain in his hands any monies after paying said royalty that he account to the Receiver of the said Coronado Coal Company for the same.

(Signed) FRANK A. YOUMANS
Judge.

Filed September 4, 1915. Wm. S. Willshear, Clerk.

O. K. Kimpel & Daily."

3508 Mr. Hull: If the Court please, we offer in evidence from this book, which has been marked Plaintiffs Exhibit No. 174, and which was produced, under the order of court by the Defendants, the same being entitled on the outside cover "Financial Secretary's Ledger, Local No. 1565" so much of page 32 thereof as shows that Clint Burris was a member of this local from August 1913 to July 1914. I do not want to encumber the record, so, while my offer may be an interpretation of the book, of course the book will speak for itself. And I just want to indicate what portion of the book is to be copied, that part showing that Clint

Burris was exonerated during the months of April May and June of that year.

The Court: Exonerated from what?

Mr. Hull: I cannot interpret what that means.

Mr. Warrum: These gentlemen, if the Court please, are well advised that "exonerated" means exonerated from the payment of dues. When they have no work they are exonerated from the payment of dues, and this "exonerated" runs all through the books which these gentlemen have examined, and I think they are fully advised as to what it means.

Mr. Hull: I thought an objection would be made to any interpretation I might put on it. I have not examined the books, and it had no explanation made to me. And I do not want to be at fault in interpreting the word "exonerated".

The Court: And you should not interpret it.

Mr. Warrum: If it is introduced for that purpose, if the Court please, we will have to introduce the entire
3509 book to show what "exonerated" means.

The Court: The Court cannot pass on that in advance.

Mr. Drinker: If the Court please we might save considerable trouble if counsel will admit that means they were members and exonerated from the the payment of dues.

Mr. Warrum: Yes, sir, we will admit they were exempted from the payment of dues, and that is what exonerated means.

Mr. Drinker: That they were members of the order?

Mr. Warrum: If the records show they were. The word exonerated means exeronated from the payment of dues.

The Court: Let the record so show, that there is no controversy on that fact.

Mr. Hull: We offer from Plaintiffs Exhibit No. 174, from page 46, so much of the page that shows that Valentine Burillo, was a member of Local No. 1565, admitted March 10, 1914, and exonerated during the months of April, May and June 1914.

We offer from Plaintiffs Exhibit marked No. 175, being on the outside entitled "Financial Secretary's Ledger" of the same local, No. 1565, so much of page 373 thereof as

shows that Clint Burris was a member of said local, admitted April 3, 1917 and paying dues from April to October of that year,—of this year.

Referring to Plaintiffs Exhibit No. 176 being Treasurer's cash book of local No. 1565, at Midland, Arkansas, we offer so much of page 38 thereof as shows Clint Burris, on August 12, 1914, to have been paid expenses to interstate convention, $30.00.

From the same exhibit, at page 44, we offer so much of that as shows Clint Burris, on July 31, 1915, to have
3510 been paid expenses to convention of $10.00.

From the same exhibit we offer so much of page 54 thereof that shows Clint Burris to have been, during the month of August 1916, a member of the Auditing Committee of this local.

From Plaintiffs Exhibit No. 175, we offer so much of page 82 thereof that shows Foster Bean to have been admitted to Local No. 1565 on January 13, 1914, and as having been exonerated on account of strike during the months from April to December of 1914.

Mr. Warrum: With the same understanding with reference to exonerated?

Mr. Drinker: We want the words "exonerated on account of strike". This means that he was exonerated from dues on account of strike.

Mr. Hull: From Plaintiffs Exhibit No. 175 we offer so much of page 242 thereof that shows that George Burnett was admitted to Local No. 1565 on August 28, 1913, and showing him to have paid his dues to September 1, 1913, and the notation on the same page which reads "This man's card was issued by W. B. Thompson, September 12, 1915, according to stub in Book D 60-55."

Mr. Hull: Referring to the same exhibit, No. 175, we offer so much of page 178 thereof as shows that Pink Dunn, was admitted as a member in 1913 and exonerated on account of strike during the months of April May and June of 1914.

Referring to Plaintiffs Exhibit No. 174 we offer so much of page 92 thereof that shows that John Manick was a member of Local 1565 at Midland, Arkansas, from the
3511 month of September 1913 on, and was exonerated during the months of April, May and June of 1914. And from the opposite page, 93, so much thereof as shows John

Manick to have been a member during January, February and March of the year 1914.

Referring to Plaintiffs Exhibit No. 175, we offer so much of page 248 thereof as shows that John Manick was admitted to Local No. 1565 in December 1915, and was admitted by card on that date and was a member during the calendar year from December 1915, it does not show when it expires.

Also from the same exhibit number page 160, so much thereof that shows John Manick was admitted to Local 1565 by card on January 30, 1917, and the notations on that date showing his status during the year 1917.

We offer, as Plaintiffs Exhibits 177 and 178, from among the papers produced by the defendants two checks drawn to the account of the United Mine Workers of America Local Union 1565, dated respectively October 2, 1917 and countersigned by John Manick President.

3512 Exhibit 177.

"Audit (in lead pencil).
U. M. W. of A. Local Union No. 1565

October 2, 1917.

To J. W. Howard, Treasurer:
In accordance with a vote of this union, you are hereby authorized to pay to C. Burris the sum of 2.00 Dollars and ..... cents, and this shall be your voucher for the same.

A. G. McGRAW, R. S.

Countersigned by
John Manick, Prest.
No. 93."

Exhibit 178.

"Audit (in lead pencil).
U. M. W. of A. Local Union No. 1565

October 2, 1917.

To J. W. Howard, Treasurer:
In accordance with a vote of this union, you are hereby authorized to pay to Billy Johnson the sum of 2.00 Dollars and ..... cents, and this shall be your voucher for the same.

A. G. McGRAW, R. S.

Countersigned by
John Manick, Prest.
No. 94."

3513 Mr. Hull: We offer in evidence from this book which has been marked Plaintiffs Exhibit No. 179, marked on the outside "L. U. 2110" so much of page 23 as shows Sandy Robertson to have paid dues on February 15, 1917, and to have been exonerated from dues in March, April and June of 1917, and that the card was listed June 2, 1916.

We offer from Plaintiffs Exhibit No. 175 so much of page 166 that shows that Molo Colo to have been admitted to Local 1565 November 4, 1913, and to have been exonerated on account of strike during April, May and June of the same year.

We offer from this book which has been marked Plaintiffs Exhibit No. 180 entitled "Financial Secretary's Ledger, Local 112", so much of page 97 thereof as shows Tom McDonald to have been admitted to said Local in July 1914 and to have paid dues during July, August, September, October and December of that year and for January and February of the succeeding year.

We offer from Plaintiffs Exhibit No. 175 so much of page 211 thereof as shows A. S. Howard to have been a member of Local 1565 at Midland during the year 1915, and dismissed by card in February, and exonerated during August and September of the same year and dismissed by card in october.

3514 Mr. Hull: We offer so much of plaintiffs' Exhibit marked 176, as shows on page 44 that A. S. Howard on July 31st, 1915, was paid expenses to convention, $10.00.

Mr. Drinker: I wonder if counsel will also agree that admitted by card and dismissed by card, means that the man came from another local and went to another local?

Mr. Covington: Yes, sir, that is what it means.

Mr. Drinker: It is understood between counsel that the words "Admitted by Card", or language of similar purport, signifies that the member was admitted to this local in in question by card from another local, and that "Dismissed by Card", or similar phraseology, signifies that the member transferred from the local in question to another local?

Mr. Covington: They are not transferred to any other local, they take their card, and can put it in any local in the country.

Mr. Drinker: That is true.

The Court: It dont necessarily mean that they became a member of another local.

Mr. Drinker: But it signifies that they were in good standing before they came and after they left?

Mr. Covington: Yes, sir.

Mr. Hull: We offer so much of Exhibit 175, page 336 thereof, so much as shows that Oscar Layton was admitted to Local 1565 on May the 2nd, 1916, and paid dues during May, 1916, and was dismissed by card May 29th, 1916.

We offer from plaintiffs' Exhibit 181, which is the financial secretary's ledger of Local 2769 at Hartford, so much of page
5 thereof as shows that Oscar Layton was admitted
3515 to the local by card; the Oscar Layton's card was received September the 22nd, 1914, and that the card was up October, 1914.

We offer from plaintiffs' Exhibit 175, so much of page No. 2 thereof that shows that Frank Gripando, that shows that he was admitted into Local 1565 in March, 1914, and that he paid dues for that year, except in April; that he was exonerated, and that he was exonerated in July, and paid the remainedr of that year.

We offer so much of plaintiffs' Exhibit 182, being the financial secretary's ledger of Local 2770, Hartford, Arkansas, as shows on page 112 that Dave Branch paid dues in January, February, March, April and May, 1914, and in November and December of 1916.

We offer from the same exhibit, plaintiffs' Exhibit 182, so much thereof on page 106 as shows that Will Reed paid dues in Local 2770, in November and December of 1916, and in February, March, April and May of 1917.

We offer from plaintiffs' Exhibit 183, being the financial secretary's ledger of Local 2770, Hartford, Arkansas, so much of the cover, of the inscription on the cover thereof, as says, "Jamces McNamara, Jr., Financial Secretary."

We offer from book, plaintiffs' Exhibit 184, being the financial secretary's ledger for Local 1526, so much of page 134 as shows James McNamara to have been exonerated in July, 1916, and August, 1916; and in September; and to have paid dues in October, November and December, 1916, and have paid during six months of 1917.

The Court: Paid dues to what?

Mr. Hull: To Local 1526, Hartford, Arkansas.

3516 Mr. Warrum: If there is any misunderstanding about it, it will save a good deal of cross-examination if you will admit that these are all locals.

Mr. Drinker: Yes, sir; that is all right. But we dont admit that the locals are not bound, and did not turn over 25 cents of that to the International, according to the constitution.

Mr. Hull: We offer from plaintiffs' Exhibit 184, so much of page 154 that shows that Earnest Nein paid dues to Local 1526 in the last six months of 1916, and up to September of 1917, and came back by card May 4th, 1917.

We offer from plaintiffs' Exhibit 185, being treasurer's cash book of Local U. M. W. of A. 1530, Hartford, Arkansas, so much as shows on page 2 that James Slankard was paid from Local 1530 at Hartford on April 23rd, 1912, for committee work, $6.75. And on page 6 of the same exhibit the item dated August 6th, 1912, showing James Slankard was paid for committee work, $7.98. And from the same exhibit on page 8, the item showing that James Slankard was paid September the 10th, 1912, for pit committee, $11.22. And so much of the same exhibit that shows on page 11, that James Slankard was a member of the audit committee. The opposite page, marked September and October, 1912, and so much of the same exhibit as shows on page 12 that James Slankard received on October the 8th, 1912, for pit committee work, $7.23. And from the same exhibit on page 14 the item showing that on December the 19th, 1912, James Slankard received for committee work, $13.92. Also on November 7th of the same year, that James Slankard received as delegate
3517 to the American Federation Convention at Pine Bluff, $50.00. So much of the same exhibit that shows on page 16 that in November, 1912, James Slankard received for committee work, 55 cents. So much of page 18, that shows James Slankard received on February the 20th, 1913, for pit and other committees, $4.23. As much of the same exhibit as shows on page 20 that on April the 17th, 1913, James Slankard received $1.88 for salary at committee work.

We offer from plaintiffs' Exhibit 184, so much of that exhibit that shows on page 163 that C. E. Pattie paid dues during the last six months of the year, not named, and during the first nine months of the next year. The same exhibit showing two pages earlier, and during many pages previous to

that, that the accounts were being kept for the year 1916 and 1917.

And we offer so much of plaintiffs' Exhibit 182 as shows on page 106 that Will Reed paid dues to Local 2770 at Hartford in November and December, 1916, and during the first five months of 1917.

We offer so much of plaintiffs' Exhibit 186 as shows,—being the cash book of Local 586, at Huntington, so much of page 23 as shows that on the 29th of October, 1914, $5.00 was disbursed to Will Reed.

We offer so much of plaintiffs' Exhibit 187, being the financial secretary's ledger of Local 2841, Huntington, as shows on page 206 that John Friddlinghouse, of Midland, was admitted to this local on September the 1st, 1913, and that he paid dues the last six months of a year not designated.

We offer from plaintiffs' Exhibit 188, being the dues
3518 ledger for local 2841, at Huntington, so much of page 40 thereof as shows that on January the 1st, 1914, B. L. Hesterly paid dues, $2.30, and that he paid dues February, March, April, May, June, July, August and the rest of that year, and from January to June 1915.

We offer so much of plaintiffs' Exhibit 185 as shows on page 55, a notation from July 1st, 1913, "Audit to June 30th, 1914, H. M. Strope, J. C. Wilson, George Westwood, balance on hand, $268.19."

Mr. Hull: I think we can save time by letting Mr. Rhine find one or two that have been [misland], and going on with another line of proof.

Mr. Drinker: If the court please, we offer from the United Mine Workers Journal, being Exhibit 31c, an article from the issue of April 16th, 1914, page 1, the bottom of column 5.

Mr. Warrum: The defendants separately object to the introduction in evidence of extracts from the Mine Workers Journals, for the reasons heretofore given.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "Arkansas Miners Determined.

"Demand Union Conditions.

"Fort Smith, Ark., April 7.

"Unionists today have [frustated] an attempt of the officials of the Bache-Denman Coal Company's mine, at Midland, near here, to strangle their organization and operate under an 'Open Shop' policy. Previous to this decision 200 union men had been employed.

3519 "The miners met about a mile from the Mammoth Vein mine, as the mine is known, and held meetings. They were addressed by a number of speakers, including Miss Freda Hogan, daughter of Daniel Hogan, a prominent socialist. Following the meeting the men formed in line and marched to the mine.

"Several clashes marked the efforts of the uninonists to persuade the men in the mine to join them. Following a disturbance in which two guards were hurt, the miners joined the unionists and left the pit. A United States flag was then hoisted from a nearby pole and the crowd departed.

"The company has announced its determination to inaugurate the 'Open Shop' policy at its six other mines in Western Arkansas and Eastern Oklahoma next fall. At present they are closed for the summer."

3520 Mr. Drinker: If the court please, we offer in evidence the expense account of John P. White for the first two weeks of April, 1914, being plaintiffs' Exhibit 189.

The Court: Produced from what file?

Mr. Drinker: By order of the court.

The Court: From what file?

Mr. Drinker: The Secretary-Treasurer's file of the United Mine Workers of America.

The Court: The International?

Mr. Drinker: Yes, sir, by Mr. Green; and I will read to the jury the portion of it as follows,—

Mr. Warrum: The defendants separately object to the introduction of these isolated items of expense, because they are not connected, or offer or promise made to connect them with any issue in this case, and they are not relevant, and do not tend to throw any light on the issues involved.

Mr. Drinker: The purpose is to show that John P. White collected his railroad fare from the union, going on union business, as explained by Mr. Green in his deposition, from Des Moines to Kansas City on the 4th of April, and that he had a hotel bill at Kansas City until the 10th of April, and then went back to Des Moines and stayed there until the 12th, and came back to Kansas City and stayed until the 16th, and I will offer,—

The Court: What is this,—1914?

Mr. Drinker: Yes, sir. I will read so much of it as covers from the 1st of April.

The Court: Don't read so fast, the court cannot understand it, and the jury I am sure cannot.

3521 To which ruling of the Court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: Expense account of John P. White, showing the amount that he collected, or claimed, from the organization on account of traveling expenses and hotel bill in April, 1914, showing under the item, railroad fare and livery, April 4th, Des Moines railroad fare to Kansas City, Missouri, $5.40; hotel, $1.00; berth, $2.25. For the 5th, 6th, 7th, 8th, 9th and 10th, hotel $4.50 each day. On the 10th railroad Kansas City to Des Moines, $5.40; hotel $4.50; berth $2.25. No hotel bill from then until the 12th. On the 12th, railroad Des Moines to Kansas City, $5.40.

Now, I offer the expense account of James Mullen, being Exhibit 190, produced from the same source for the same period, showing under April 3rd,—

Mr. Warrum: Now, the defendants separately renew their objection to the introduction of isolated items, without any connection or any light being thrown by them on the issues in this case.

The Court: Objection overruled. The court is assuming that there may be an inference drawn from the unexplained, and that counsel for the defendants will have ample opportunity if they wish to explain them.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: April the 3rd, railroad fare Ft. Smith to Midland, 75 cents; April the 4th, railroad fare Midland to Kansas City, $11.05; hotel, $3.00; April the 5th, 6th and 7th,

hotel bill at Kansas City, $3.50 each day; April the
3522 8th, railroad fare from Kansas City to Ft. Smith, $11.05; livery, $1.00; hotel, $3.00; April the 9th, hotel at Ft. Smith, $3.00; from the 10th, railroad Ft. Smith to Kansas City, $11.05; hotel $3.50; for the 11th, 12th, 13th, 14th and 15th, hotel at Kansas City, $3.50.

We offer from the treasurer's report, being Exhibit 191, from the fifth semi-annual treasurer's report of Fred W. Holt, Secretary-Treasurer of District No. 21, United Mine Workers of America, produced by the United Mine Workers of America, and the United Mine Workers of America, District 21, in answer to the order of the court,—

Mr. Warrum: Now, if the court please, the International organization of the United Mine Workers of America objects to the statement that these reports were produced by them, as stated by counsel. They were produced on an other made by the court, but against the United Mine Workers of America, District 21, John Wilkinson, President and Ross, Secretary, and they were not within the custody or under the control of the National office, but were within the custody and control of the District office, and could not have been produced by the International.

Mr. Drinker: The order read,—

The Court: It doesn't make any difference how the order was made, but how they were produced.

Mr. Drinker: We have no way of telling who produced them.

The Court: Then you should not make offer that way.

Mr. Drinker: Will your Honor ask them to make a statement?

The Court: This was produced under the general order.

3523 Mr. Warrum: May I make a statement, as counsel for the International?

The Court: You may make a statement as an officer of the court.

Mr. Warrum: I, myself, representing the National organization, produced the Joint Conference Reports, the National Convention proceedings, and the Mine Workers Journ-

als, the Executive Board minutes, the correspondence between President White and Officers of District 21, and the financial accounts held by Mr. Green, in his custody and control, and I never produced, and I could not produce,—I produced those after inspecting and going over the files of the International organization under my direction, in accordance with the order; but the International did not have, and I did not produce on their behalf, and could not produce on their behalf, from the files any reports made by the District Secretary-Treasurer, and did not do so. I have made it at some length, to cover everything that I did and did not do.

The Court: It appears from the statement of counsel that this offer of this exhibit was not produced by the International organization. It doesn't appear, however, by whom it was produced.

Mr. Drinker: Are we bound by counsel's statement as to the power of the International?

The Court: You are bound by what he produced here, and his statement of what he produced here by order of the court.

Mr. Drinker: But not by his statement that he had
3524 no power to do it?

The Court: That is a question that is not here at all.

Mr. Warrum: I will withdraw that part of it.

The Court: There is no use spending any time over that, that question is not before the court.

Mr. Drinker: Then it was produced by District 21.

The Court: The court will assume that it was.

Mr. Drinker: Then we offer it as so produced. From that Exhibit No. 191,—

Mr. Warrum: Now, the United Mine Workers of America, as an International organization, so sued, objects to the introduction in evidence of any items from the financial report of the Secretary of the District, for the reason that there has been no conspiracy shown between the National and the District, and it would not be binding on them; and for the further [—] that unless isolated statements are offered with some explanation, it would not create a fair inference.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them then and there duly excepted and still except.

Mr. Drinker: We offer from Exhibit 191, page 21, Officers' Report, P. R. Stewart, President, first half of April, and I will read the items from April the 3rd to April the 15th. April 3rd, railroad fare St. Louis to Kansas City, $5.50; hotel, $2.50; 4th and 5th, hotel, $5.00; 6 and 7th, $2.50 each day; April 8th, to railroad fare Kansas City to Ft. Smith, $10.30; hotel, $2.00; the 9th, Kansas City to Ft. Smith, hotel $2.50; April 10th, railroad Ft. Smith to Kansas City, $10.30; hotel, $2.50; 11th, 12th, 13th, 14th and 15th, hotel bill $2.50 each day.

3525 If the court please, we offer from plaintiffs' Exhibit No. 48, being the minutes of the Executive Board of the United Mine Workers of America, May 4th to 8th, 1914, produced by the United Mine Workers under the order of the court, and identified by the witness John P. White, as part of his personal files, the following portion,—

Mr. Warrum: Let me see it. Now, to the offer the defendants separately object for the reason that the extract shows on its face that it refers to a collateral matter, and is a controversy that Mr. Bache has testified about in connection with his expulsion from the Southwestern Operators' Association, and has nothing to do with this case, and could not bind the defendants, or throw any light on the plaintiffs' contention with regard to the issues of fact.

Mr. Drinker: When your Honor sees it, you will see that it goes much further than that; it is just about this very case, the riot of April 6th.

The Court: Let me see it. Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: From page 3, "International Executive Board, United Mine Workers of America. May 4th to 8th, 1914.

"First Day. Indianapolis, Monday, May 4, 1914.

"Morning Session.

"The meeting of the International Executive Board was called to order at 10:00 o'clock a. m., President John P. White in the Chair.

"Absent: Board Members Haggerty, Lawson, Rees and Harrison."

3526 Now, I will omit to page 91. (Reading.)

"President White: Another matter I want to mention to the Board before we adjourn. I have a few matters here I wanted to state, in order that my action might be known to the Board officially and the Board would have the information that they ought to have in a brief way. Several weeks ago, or rather, more than two months ago, I guess it was, a suit was instituted in the southwest by a man by the name of Bach, a member of the Bach-Denman Coal Company, against the President of the Southwestern Interstate Coal Operators' Association, Charles S. Keith, in which he demanded an accounting of the funds of the Southwestern Coal Operators' Association."

I will omit to the middle of page 92, the following sentence (reading):

"Well, that was all the object this man Bach had in mind, was to procure the information."

Mr. Warrum: On behalf of the defendants, I separately object to reading in this way from the statement, and would ask that the court rule that counsel read continuously, so that the thought would be connected.

The Court: Objection overruled, with the suggestion that the reading of any portion of it makes the entire article competent on cross-examination.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: Now, on page 93 (reading):

"When he secured this information, he immediately went down to Arkansas and started to run his mine non-Union. The boys simply marched in on him in a day down there
3527 and kicked his Colorado guards out of there and broke their jaws and put the flag of the United Mine Workers on top of the tipple and pulled the fires out of the boilers, and that was all there was to it, and the mines have been idle in there ever since. I do not say that our boys did this, but I mean the people from all through that country marched in and stopped the work, and when the guards offered resistance, several of them were roughly handled, but no lives lost, as I understand it."

Mr. Warrum: Ought this not be read now?

The Court: You may read it now if you like, or you can leave it and read all or such portions as you prefer. I presume you want to introduce some things additional in each of these exhibits.

Mr. Warrum: Perhaps I should be consistent and read it all when they get through.

The Court: I think that would be better.

Mr. Drinker: We next offer from the United Mine Workers Journal of the 9th of July, 1914, on page 7.

The Court: Are you through with all of these books now?

Mr. Drinker: Oh, my, no, we have hardly begun! On July 9th, 1914, page 7.

Mr. Warrum: The defendants separately renew their objection to any extracts from the United Mine Workers Journal, for the reasons heretofore given.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "From Arkansas.

3528 "Fight on at Hartford.

"Hartford, Ark., July 3.

"I wish to have a few words in the Journal in regard to the strike here at No. 4, Prairie Creek, for which they are scabbing, and furthermore new men are coming in from all over the country. Some think No. 4 is working under union conditions and I wish to help strangers out so they will not come to Prairie Creek no. 4.

"The Bache and Denman Coal Co. have wires around the shaft and tents in the bull pen in which they have about 120 scabs and new ones coming in every day. The company has put the unions miners out of their houses so they may have more room for more scabs. The men here are in tents in the backwoods, so do not let the labor agent talk you into coming to Prairie Creek No. 4. We are out to win and we intend to do so. We have a strong bunch of scabs here. We have scabs from Spadra, Ark., and U. S. gunmen who have come here from Colorado to guard the Arkansas scabs.

W. H. CLUCK."

Mr. Drinker: From the United Mine Workers Journal of the 23 of July, 1914, at page 4.

Mr. Hull: Being the editorial page.

Mr. Warrum: The defendants separately renew their objection to the introduction in evidence of any extracts from these Journals.

The Court: Objection overruled.

To which ruling of the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull: Being the third column of the editorial.

(Reading): "The Truth About Hartford, Arkansas.

3529 "Attempts on the part of the hired army of the Bache-Denham Company, New Hartford, Ark., to emulate the Coronado gunmen militia brought about an outbreak on the part of the union miners, in which the gunmen were badly worsted.

"When the Bache-Denman broke with the organization and locked out the union miners, the organization in District 21 furnished tents for the miners who were evicted from the company's houses.

"The tents were on private grounds, rented by the organization; were as much the property of the men who live therein as is the mine tipple the offices, or any other of the buildings around the mine the property of the company.

"More than that, the tents were, and are, the only shelter these men have—the only protection for their wives and children.

"The operators recognize that these tent colonies indicate to any of the men they may bring in under false representations the fact that a strike is on. Many such men have turned back when they saw these tent homes.

"For many weeks past the private army of the operators harassed the miners and their families in their tent homes. Night after night the tents were shot into from the surrounding woods. Men and women going from the tent colony on business of their own have been waylaid and beaten. Many of the men have gone out from the camp and never returned. In fact, the conditions surrounding the miners camp indicated that a repetition of the Ludlow horror was the intent of the gunmen.

"All night Thursday the tents of the miners had been the targets of the hired thugs. Union miners living at a distance heard of the attack. Determined that a massacre like that of Colorado should not be perpeterated upon their friends and relatives, many men marched to the rescue, The sharpshooters were dislodged and followed to their camp; shots were exchanged all the way. The miners then determined to destroy the enemies' stronghold as a matter of protection for their homes, the only shelter of their families.

"We do not advocate force as an argument. We would adjust all of our differences at the council table, if the choice was ours. But when it is necessary to protect our homes, our families from the attacks of hired ruffians who do not spare, as we have learned too well, the mother or the babe, to who murder and arson are 'all in the days's work', we applaud the men would be glad to personally aid the men who defend their homes, even though it be necessary to follow their assailants to the shelter of the companies' buildings. Their rallying place, from which they come forth at night on their work of destruction."

"There are no arguments we can offer to the hired gunmen of the company. Their work is to cast the bludgeon of force into the scales of reason.

"We maintain, and those who have not been prejudiced by lying reports, and are not personally interested, will agree that the men of Arkansas had a perfect right in protect their homes and their loved ones from a like fate as that which overtook the victims of greed and violence at the Lud-
3531 low tent colony."

Mr. Drinker: If the court please, we offer from the United Mine Workers Journal of the 30th of July, 1914, page 2.

Mr. Warrum: Defendants separately renew their objection to the reading of extracts from the United Mine Workers Journal.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull: The fourth column on page 2 (reading):

"Miners Wait Contempt Decision Of U. S. Judge

"Union President and Six Others Figure in Case of Unionist.

"Huntington, Ark., July 25.

"United States Judge Youmans will render his decision in the contempt charges against President P. R. Stewart, of the miner's union, and six others within the next three weeks. The cases occupied the time of the Federal Court for the past two weeks. Over a hundred witnesses were summoned.

"Judge Youmans stated at the conclusion of the arguments by the counsel for the Mammoth Vein Coal Mining Company and the United Mine Workers of America that he wanted to examine the testimony of the witnesses further and that he would render his decision later. The defendants are under bounds of $100 each.

"Fred W. Holt, secretary of District 21, of the miners' union, testified that he shipped guns from McAlester, Okla., his home, to Midland, for the purpose of enabling the miners to protect their wives and children aginst the out-
3532 rages committed by the private armed guards. He stated that the arms were shipped without the knowledge of President Stewart. Deputy Marshal Jim Holt, who has been stationed at Mine No. 4 to keep Marshal Frank Hayes advised of the situation, when placed on the stand denied the testimony of company guards.

"President Stewart testified he had always advised the members of the union residing at or near Prairie Creek not to violate the injunction."

Mr. Drinker: We offer from the United Mine Workers Journal of July 30th, 1914, page 3, column 2.

Mr. Warrum: The defendants separately object to the extract for the reasons given, and for the reason that it is a communication or quotation from some contributor, and it is not competent.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: Preliminary, I want to offer from the Journal of March 30th, 1911, from the editorial page, a notice.

Mr. Warrum: The defendants separately object to the introduction of the evidence offered for the reason counsel's statement does not contain facts to make this competent.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: And I offer the Journals of the three years preceding this to show that the same notice was [tontained] in every issue up to March 30, 1911. The notice reads
3533 as follows (reading): "The editor is not responsible for the views expressed in the Journal, except the unsigned matter that appears on this page. Correspondents often give expressions to views, and cartoonists make sketches that are not in accord with our views and opinions and by no means reflect them. But every subscriber is entitled to an expression of his thoughts as much as we are, so long as he complies with the rules and does not use intemperate language, or become personal. We are not responsible for other people's expressions."

Now, I offer all the Journals after April 1st, 1911, when this organization went into effect, to show that that notice was omitted from then on.

Mr. Warrum: The defendants separately object to the evidence offered, for the reason it throws no light on any of the issues, and for all the reasons heretofore given.

The Court: [Objectionoverruled.]

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: Now, in this same connection, preliminary to the principal offer, I offer from the Journal of May 14th, 1914, an article which has nothing to do with this question, but it is merely because it is written by a man, and criticised by the editors, and the article I am going to read was not criticized by them. The article I refer to now is an article entitled, "Industrial Organization," by Eugene V. Debs.

Mr. Warrum: We object for all the reasons given, and for the further reason that it appears in the statement of plaintiffs' Counsel that it is irrelevant.

3534 The Court: Objection sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Drinker: And I may also offer, in the same connection, the editorial in that issue entitled, "Secession Not The Way To Unity."

The purpose of this is to show that two or three months before, Eugene V. Debs wrote a signed letter to the Journal in which he advocated certain action in connection with the corporate organization of the United Mine Workers. Under the signature of the editors they say they published this but don't agree with it, and in the editorial they say they don't agree with Mr. Debs, and the purpose is to show that when they come to this next article, about Arkansas, it would carry the additional inference that they did agree with Mr. Debs this time.

The Court: I don't think we will go into that system of reasoning. The objection will be sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Drinker: We offer an article from the Journal of July 30th, 1914, page 3, column 2, as follows,—

Mr. Warrum: Just a minute. The defendants separately object to the reading in evidence of this excerpt from the United Mine Workers Journal. It appears from the statement of counsel, and shows on its face, that it is an article from Eugene V. Debs, who is not a party here.

The Court: The objection will be overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

3535 Mr. Hull (reading):

"Bravo,

"Arkansas Coal Diggers!

"(By Eugene V. Debs.)

Hats off to the Arkansas coal miners!

"They have routed the gunmen and delivered a bodyblow to the government by assassination.

"For some there [there] has been a strike on in the Hartford valley, where one, Franklin Bache, arbitrarily refused to deal with the union and insisted upon operating a scab concern. When the miners in his employ struck he promptly did what the operators in West Virginia and Michigan did, and what the operators in Colorado are now doing, namely, he ordered out his privately owned and armed gunmen and
3536 assassins, a small army, equipped with high power rifles, to slaughter the miners and their wives and babes and re-enact Ludlow.

"But the miners had heard of West Virginia and Michigan and Colorado,and they were not caught napping. They were not so well armed as Bache's red-light gunmen, but what they lacked in physical equipment was more than made up in moral stamina, and when the smoke of battle cleared away several gunmen were found to have bitten the dust and the rest vanished into mist and no trace of them has been found since.

"Bravo, ye coal-digging slaves of the pits! You have done your duty in a heroic manner and deserve the applause of all honest men. May the miners everywhere catch your brave spirit and follow [you] inspiring example!

"Government by private gunmen and the massacre of honest toilers must be put an end to in the United States.

"We Socialists are for peace and we are steadfastly opposed to violence except when lawless violence is forced upon us and we are compelled to fight for our lives and in defense of our families and homes.

"In recent years the great trusts and corporations have gone entirely outside of the law to wage their lawless warfare on lawful labor unions. They have established their thug-recruiting agencies in all the large cities, through which they drag the slums to recruit their army of cut-throats and assassins.

"This private army of the corporations, an absolutely lawless gang of man-killers, is armed with machine guns and high power rifles, and when workingmen go out on strike, as
3537 they have a lawful right to do, the corporation army of private thugs is at once ordered out to shoot them down like dogs and to insult, outrage and slaughter their wives and babes, as they did in Cabin Creek, Calumet and Ludlow.

"To submit peaceably to such criminal invasion of their rights and such infamous outrages upon their manhood, workingmen must be sunk to fathomless depths of degradation and dead to every sentiment of self respect.

"In the case down in Arkansas the scab operator, following the example set by the operators in other States, had his court injunction issued, ordered out his private army of man-killers, then sat himself [smugly] down in his easy chair to wait until the miners whose labor had enriched him lay weltering in their own blood.

"But this particular operator was fooled. He got his lesson and he will not forget it. When the battle was over his

private army was anihilated and his mines and tipples, to the value of $200,000, blown up with dynamite, a mass of ruins.

"This is the way government by gun-men and assassins should be made to react upon the criminal master class every time they put it in operation.

"Bravo, once more, Arkansas coal diggers! You have set a heroic and inspiring example to the working class of the nation.

"The corporation gunmen who massacred workingmen, murder women about to become mothers and suffocate and roast babes as they did at Ludlow, are the most detestable of degenerates and the vilest of outlaws. They are more
3538 dangerous than maddogs and should be treated accordingly. They have absolutely no right that any honest workingman is bound to respect.

"They are private assassins and public enemies. They are the fomentors of strife, the inciters of riot and the shedders of innocent blood. They are a perpetual menace to peace and good government and they thrive only in violence and crime.

"When these miscreants are sent out to slaughter honest men, pillage their homes and kill even the babes in their cribs, it is time to take up arms against them.

"If the law under capitalism permits lawlessness and violence on the part of the corporations and their private army of thugs, and workingmen are denied the protection of the law, then nothing is left for them but to defend themselves and their loved ones, and if they have not the manhood to do this, they deserve to be crushed beneath the iron heel of their despotic masters.

"Fred W. Holt, secretary of District 21 of the United Mine Workers, testified in court that he had shipped the guns from McAlester, Okla., his home, to the miners in Arkansas "for the purpose of enabling them to protect their wives and children against the outrages of the private armed guards."

"All honor to Holt for having shipped the guns to the unarmed miners and for standing up in court like a man and admitting it!

"If government by gunmen is to prevail, then liberty is dead and the labor movement a farce.

"The Arkansas miners have throttled the monster and
3539 I appeal to the miners everywhere to arm themselves and prepare to do the same. They are strictly within

their lawful right in arming themselves against lawless invasion and in defense of their homes.

"The next assessment that is levied by the United Mine Workers and the Western Federation of Miners should be levied for the raising of a gunmen defense fund for furnishing each member with a high power rifle and 500 rounds for the protection of their lawful rights, the defense of their wives and children and for wiping out government by gunmen and assassination in the United States."

3540 Mr. Drinker: We offer from the Journal of August 6, 1914 Article on Page 5.

Mr. Warrum: The defendants separately renew their objection.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them then and there duly excepted and still except.

"Scab Expelled.

Denning, Ark., July 29.

Complying with the instructions of L. U. 1814 I hereby ask you to publish the name of one Lorenzo Hallowell as a scab. He was formerly a member of this local and has confessed to guarding scabs for the Bache-Denman Company at Prairie Creek during the recent trouble at that place.

E. B. STOCKTON,
Sec. L. U. 1814."

Mr. Drinker: We offer from the Journal of the same date Article on page 6.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: The article is at the bottom of Column No. 4 entitled "From Tennessee." (Reading.)

"From Tennessee.

Keep Away From Strike Districts.

Briceville, Tenn., July 26.

I will write as I haven't seen anything for some time from this neck of the woods. Well, we are having some vis-
3541 itors down here in District 19 from Arkansaw. These visitors are labor agents. I happen to know one of these gentlemen from Arkansas. His name is Houston. He came down here to see his old friends and take some of them home with him, because he felt sorry for them and their wives and little children and wants them to go out there and create the same conditions they have here, and I was man enough to tell him so. He was told to steer clear of that fellow Dick Low. He got a few men to go with him and then he sent one of these men back and he told what a man could make breaking a strike and he also got some to go. He got a minister of the gospel to go along with him and I suppose he could use him to preach some funerals. They met with a warm reception there. This same preacher went to Spadra, Ark., some three years ago when trouble was on there. How would you like to sit and listen to a man of that type preach a sermon? He is not worthy of listening to. I was out there one time when times were like they are now and you could not get work if you opened your mouth in your own defense or your family.

Stay with them, boys, you will not be bothered with any more of the boys from Coal Creek or Briceville. Some of them that went haven't got back yet. They might have passed on over on the other shore. Miners of District 19 for goodness sake do not go to other districts to break a strike. Look at your conditions here; look at the mining camp with [therir] old tumble-down houses; look at the ragged women and children; look how they have sucked the life blood out your race, who do not get what they should have to make bone and muscle, and for God's sake do not go and try to put men down who have fought and won the battles for themselves. Two-thirds of the miners go to work every
3542 morning without enough to eat in their buckets. This is the truth and cannot be denied. And then the idea of men going somewhere else to help break a strike. They did well to get back alive. I hope to hear from some old timer in Arkansaw who knows this man Houston.

I will close for this time and if I don't get lynched I will come again.

DICK LOWE."

Mr. Drinker: We offer from the Journal of the 19th of November, 1914, article in the—or beginning in the third column.

Mr. Warrum: To which the defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading):

"Federal Troops In Camp Near Prairie Creek No. 3.

Hartford, Ark., Nov. 12.

Troops A, B, C and D of the Fifth Regiment of the United States cavalry arrived at Prairie Creek Friday and pitched temporary camp on the ball grounds at that place. On Sunday they moved to the site of old No. 3, where they are close to James Fork creek, where a more bountiful supply of water is to be had. They will probably all remain at their present camping place according to information secured from Adjutant F. E. Davis.

Each troop consists of about sixty men and the following officers are in charge: Major Nathaniel McClue, commander-in-chief; Senior Captain W. B. Scales, in command of troop A; junior Captain Theo. B. Taylor, in command of troop D;
Lieutenant John H. Barnard of troop C, and Second
3543 Lieutenant W. H. Y. Young of troop B; F. E. Davis,
acting quartermaster and adjutant to Major McClure; E. Converse is in charge of the machine gun detachment. This detachment consists of twenty-five men and five guns capable of firing 600 rounds per minute. The hospital or Red Cross corps consists of a surgeon, a sergeant and five privates. Their services were in immediate demand upon their arrival, as one private was seriously injured by a mule jumping on him while they were unloading. For a short time it was thought the soldier was killed, but he recovered to some extent and was sent back to Fort Sheridan on Saturday.

On Saturday a regular picnic was made of their camp, sightseers from all the surrounding towns being on the ground from morning till night and all were accorded a welcome. Both officers and privates speak in highest terms of the friendly hospitable manner in which they have been received and are delighted with the climate, the scenery and

the people of Arkansas. The scarcity of water near their location is the only serious drawback to be overcome.

The appearance of the soldiers on the streets occasioned a good deal of natural curiosity at first and they were usually attended by a crowd of small boys who apparently expected something in the way of a circus, but everywhere and by everyone they were treated with courtesy and consideration."

Mr. Hull: We also offer the part headed "The History of the Case."

Mr. Warrum: To which the defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

3544 Mr. Drinker (reading):

"The History of the Case.

So many and such grossly exaggerated and false reports have been circulated in regard to the so-called "strike" at Prairie Creek that perchance a plain, unembellished statement of the true facts as the citizens of the Hartford valley see them, may help to ameliorate the unsavory reputation attained for the town and its inhabitants by the yellow tactics employed by some other papers that could be named.

There has been no strike at Prairie Creek at any time. The Bache-Denman Company last winter closed down one after another of its mines until only No. 4 was working. On March 25 a notice was posted ordering the men at that mine to clean up and remove their [tolls]. This order was obeyed. On April 3 the mine was opened up with non-union labor.

The Bache-Denman Company at that time had a signed contract with the union which did not expire until July 31. They, without presenting any excuse, abrogated this contract and at the same time withdrew from the Southwestern Coal Operators' Association. Two years previously a similar tratorous act had "got him in bad" with the operators and no one knew what next to expect.

On April 6 an immense mass meeting was held at Prairie Creek school house, at which probably 2,000 persons were present. The meeting was called for the expressed purpose of impressing on the company and its employes the strong union sentiment that prevailed throughout the district.

All the speeches made counseled against violence, violation of law, or destruction of property. But in spite of this
3545 a few hot heads were drawn into first fights with some of the guards and employes. On April 9 the company secured a temporary injunction restraining sixty-five named defendants and all others from interfering with the operation of its mines. This injunction was secured in the Federal Court because of the fact that the mine was controlled by a West Virginia corporation (with $100 capital stock). The injunction was made permanent on May 15 by Judge Youmans.

A short time later five deputy United States marshals were sent to guard the mines, but were withdrawn a few days later when private guards hired by Bache-Denman were placed about the mine and laborers imported from other states.

Early in July the proprietor of a booze joint was notified that his union neighbors would no longer stand for his supplying the guards with liquor. When the guards were refused their accustomed drinks they became enraged and fired into the house of the joint keeper. That night it was reported that the guards returned and shot up the town. Whether this is true or not investigation has not yet decided, but it is true that there was lots of shooting and that the majority of citizens there believe it was the guards and non-union men who did the work. The women and children fled in [firght] to Hartford, where they sought protection. Wild rumors that the "scabs" were coming to burn up both Prairie Creek and Hartford were circulated and public sentiment was wrought up to the highest pitch of excitement. The shooting again occurred and on July 17 a large body of men armed with anything they could find, from a pick axe and air rifle up to the best high powered gun marched to the mine and after chasing away the guards proceeded to destroy all the property belonging to the company. It was during this trouble,
3546 which lasted three days, that James Sylessberry and John Baskin, non-union men, are alleged to have been captured, killed and burned. The property loss incurred by the company is figured at close to $500,000.00.

Following this occurrence the company took advantage of the bankruptcy laws and Franklin Bache was appointed receiver. Late in October a small force of employees under the protection of two deputy marshals was sent to work at some small surface mines owned by the company. These

men were in turn run off by a body of probably twenty-five unknown men on October 28.

On October 31 Marshal Black was in Hartford all day and made several arrests. He was in the depot with his prisoners when some half dozen drunks learned of the matter and decided to take the prisoners away from the officer. This was done and the report of a mob of masked men grew out of the fact that one poor fellow with no more sense than to join in the game, still retained enough sense to desire to remain incognito and put on a mask.

The action of the drunken men is strongly condemned by all citizens, but it is only one of the natural results of too much bad booze in the town. In regard to the traveling man who is reported to have been beaten and stabbed (well, he probably doesn't want his house to know) but the truth of the matter is he was in a blind tiger and participated in the usual drunken row.

These booze joints are safe places for respectable persons to stay away from and it is a serious blot on their fair name of Hartford that they are allowed to exist. More than all other causes combined they are responsible for the lawless acts that have been committed.

It is lamentably true that a great many members of
3547 the Miners' union are habitues of these breeding places of vice and when a fellow seeking noteriety gets a few drinks of "rot-gut" whiskey he is apt to try most anything. But these men do not represent the miners' organization any more than they represent the citizenship of Hartford and Prairie Creek. The majority of miners as well as the majority of the citizens outside of the organization are a peaceable, God-fearing, industrious people, who for too long have stood the opprobrium engendered by the acts of a few lawless characters who can always find a following among the foolish and unthinking. All fair-minded citizens will rejoice to see the guilty brought to justice and await with interest the results of investigations, firm in their faith that the right will ultimately prevail and that when a fair hearing is given that the miners' organization as well as the law-abiding citizen without its ranks will no longer be called upon to bear the stigma of disgrace brought upon the community by the action of an undesirable minority.

Sunday's daily papers gave out information regarding an immense mass meeting that was supposedly held at Hartford Saturday night and makes mention of "great bodies of men"

seen going toward Hartford. Possibly to the editors of papers in a quiet little burg like Fort Smith, where there's never anything doing, it may have appeared like a mass meeting, but it was only the usual Saturday night crowd in Hartford. It just won't do for those reporters to come to Hartford on pay-day night—they'd think the entire European army had gathered here.—Hartford Observer."

Mr. Drinker: We next offer in evidence from the minutes of the International Executive Board, Plaintiffs Exhibit No. 52, produced by the United Mine Workers in answer to order of Court and identified by John P. White.

3548 Mr. Warrum: May I see it?

Mr. Drinker: Yes, (handing document in question to counsel).

We offer from Page 1 of the minutes of the International Executive Board of the United Mine Workers of America, Indianapolis, Indiana, November 30, 1914.

Mr. Warrum: The defendants separately object to the introduction in evidence by plaintiffs counsel of the extract from the Executive Board minutes, for the reason that it shows on its face that it is a privileged communication from attorney to President White to be reported to the Executive Board, which resulted in the appointing of official counsel. And for the further reason it is a matter that transpired and proceedings that occurred long after the institution of this suit.

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: There are some things in here I am going to skip. (Reading.)

"Minutes

of

International Executive Board

U. M. W. of A.

Indianapolis, Indiana, November 30, 1914.

The Board was called to order at 10 o'clock a. m., Monday, November 30, President John P. White in the chair.

Vice-President Hayes, Secretary Green and all the members of the Board were present."

Mr. Drinker: I will now skip to page 3 under the heading "Arkansas". (Reading.)

3549

"Arkansas.

Legal Advice in Damage Suits.

"President White: Federal troops are in control of a certain section of Arkansas as a result of violence that has taken place. A federal judge down there got the troops, as I understand it, on the ground that contempt was being practiced upon his court. Some time ago a large number of indictments were secured against members of the United Mine Workers, some of the officers of District No. 21; I think some of them received sentences of four or five months, but the sentences have been suspended. The grand jury has been in session since, and I think they rounded up some 26 indictments in Judge Youmans' court. The lawyer in charge, Mr. Covington, sent me a communication in connection with this matter, asking me to have it submitted to some attorney accustomed to dealing with similar cases for the United Mine Workers, in order to get his opinion."

Mr. Drinker: Now omitting down to the middle of the page. (Reading.)

"Mines down there were destroyed absolutely following the attempt of the Bache-Denman Coal Company to operate their mines non-union. They were formerly operated under the contract of District No. 21."

Mr. Drinker: We now offer in evidence from the United Mine Workers Journal on the 3rd of December, 1914, on page 4, the editorial headed "Resistance to Lawlessness a duty."

Mr. Warrum: The defendants separately object to the introduction of the extract from the editorial in the United Mine Workers Journal, which was long after the institution

3550

of this suit, and it does not tend to establish or prove any issue involved in this case or any of the issuable facts, and for the further reason that it is hearsay.

The Court: I do not know what the contents of the articles are.

Mr. Drinker: It is on the subject of ratification (counsel hands article in question to the Court.).

The Court: The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull (reading):

"Resistance to Lawlessness a Duty.

The situation in the Prairie Creek district of Arkansas is the logical sequence of the program that is being carried on by the employers of labor all over the country who happen to have disputes with their employes; we mean the program of importing bad men as soon as any signs of trouble become manifest; to encourage such hired thugs to commit overt acts against the workers on strike, or whom, as in the case in point, they have locked out.

It appears as if all of our institutions for the enforcement of law have proven inadequate, have completely broken down when attempts are made to handle these private armies of the employing classes. Outrages have been committed by them, openly, and to the knowledge of the supposed officers of the law, but so far we have not heard of an instance where either they, or any of their employers, have been handled by the law.

We have the record of a federal grand jury, reporting
3551 that men in the employ of, and responsible only to the operators of Colorado, even prior to the strike, absolutely controlled the camps around the coal mines; administered and enforced the will of the operators, or local managers in lieu of, and often in open definance of the law.

We need not mention here the outrages committed by these hired bands of murders during the strikes in Colorado and in West Virginia. The miners all over the land have heard, and in our opinion have determined that if, as seems evident, there is no law in this land to protect them from the depredations of the hired gunmen, then it is their sacred duty to themselves, to their families, and finally to their country, to resist this usurpation, by force, of the powers of government; the subversion of all government to the will of those who are able to hire such force.

With the lessons of Holly Grove, Ludlow, the Calumet outrage, where seventy-two innocent children attending a Christmas tree entertainment were intentionally murdered, in order that terror might be driven into the hearts of their fathers who were on strike, before them, the men of Arkansas saw the same lawless force ready, at the command of the operators

who sought to destroy their organization, and in defense of the free institutions of their state and country all classes of the citizens of the Hartford valley joined hands to drive out the Hessian army, that experience had taught them held themselves above all laws; and whose assumption of being above law seems to be justified by the fact that, so far, neither state nor federal government have taken steps to curb, or to punish.

We deplore violence, but have no words of condemnation for men who join together to resist lawless and unchecked force."

[Mr. Drinker: Next we offer from the Journal of]
3552 Mr. Drinker: We next offer from the United Mine Workers Journal of November 26th, 1914, page 1 column 6.

Mr. Warrum: The defendants separately renew their objection, as not tending to prove any issuable fact, and as hearsay.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull: (reading): "26 Miners Indicted

"Some Frivilous Charges.

"(Special to Mine Workers' Journal.)

"Ft. Smith, Ark, Nov. 20.

"The most unnecessary Federal grand jury ever assembled by a Federal judge to probe disturbances of a stricken community today returned twenty-six indictments against members of the United Mine Workers. The following were indicted under the blanket indictment: P. R. Stewart, former president of District 21; Fred W. Holt, former secretary of District 21; James McNamara, former member of the City Council, Hartford Ark.; James Slankard, resigned constable of Hartford township; Sandy Robinson, Charles Robinson, Bee Trout, Valentin Burillo, John Manick, Moro Colo, Wm. Reed, Michael Ryan, Foster Bean, Charley Robinson, Charles M. Blackburn, Bruce Jordan, Marvin Ray, Ernest Neim, James Z. Crossley, Frank Crossley, Marvin Stanfield, Wm. W. Roberts, John Champion, Dave Branch, Jesse Edward and Clint Burris.

"The indicted men are charged with conspiracy. Some of the 'overt acts' set out in the indictment are interesting.

The fourth counts follows:

3553 "'Said Moro Colo (otherwise called Morro Collo) and Foster Bean (otherwise called Foster Beam) on May 16, 1914, at Prairie Creek, aforesaid [—] three stones at certain employes of said Mammoth Vein Coal Company, to-wit: Charles Cherk, Earl Kuntz, Will Bohannon and Levi Brown.'

"The idea of a special grand jury of the United States Court being necessary to determine the damage done by a 'pebble thrower,' in what is said to be by the judge of the court a serious conflict between capital and labow. Never before in the history of the Nation has the same smallness in scope of proceedure been equaled.

"The fifth count in the indictment is doubtless one of the most serious charges that was ever embraced in any indictment. It follows:

"'Said Sandy Robinson (otherwise known as Sandy Robertson), Moro Collo and Charlie Johnson, James Slandard and others, on June 10, 1914, at Prairie Creek, aforesaid cut and destroyed a bag of feed belonging to said Mammoth Vein Coal Company.'

'The terrible destruction of a sack of feed is another evidence of the great danger to which the lives of the peaceful citizenship of Hartford valley was daily menaced and made necessary the calling of the special grand jury.

"And now we have the indictment resulting from the fact that Judge Youmans received a threatening letter from some unknown, which the judge said made him ever fearful for his personal saftey. The section of the indictment and the letter follows:

"'Said James Z. Crossley, on July 27, 1914, deposited in a railway post office on the Rock Island railroad, for
3554 mailing and delivery of the judge of said United States Court for the western district of Arkansas, a certain letter, to-wit: a letter of the tenor following:

"'July 27, 1914.

"'Judge Youmans:

"'Dear sir—You know the acts you have decided upon. As a warning friend, we caution you to be more considerate on the administration of your decisions. You are notified to comply with requirements of your office. If such is not complied with very shortly their's likely to be an un-

expected change between your soul and fleshy temple, and you won't know the day, nor time, nor what means such will take place. Still we don't want to act cowardly, but give you a little time to act differently, and at any rate you will have a little time for future preparation for the place called Heaven. You are weighed in the balance and found wanting. Their's a great change soon to happen.

" 'Signed, FOREWARNED.

" 'This is a barking dog, and if teased much longer will bite.

" 'President of Committee.

"Such were the findings of a special grand jury of the Federal Court, impaneled by Judge Youmans to probe the recent mining troubles in Arkansas.

"All of the men indicted will surrender and make bond."

Mr. Drinker: We next offer in evidence from the same issue of the Journal on page 7 the article entitled "Causes that Led up to Trouble in Arkanas", by K. C. Adams.

Mr. Warrum: The defendants separately renew their
3555 objections for the reasons heretofore given.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull: (reading): "Causes That Led Up To Trouble In Arkansas. (By K. C. Adams.)

Ft. Smith, Ar., Nov. 20.

The industrial trouble in Arkansas is more than a fight between employes and employer; more than a conflict between a powerful corporation on one side and a powerful union on the other. It is a battle to a finish to see whether the Federal Government will protect unsound business enterprises against the protest of legitimate demands coming from disturbed citizens who have innocently have fallen victims to the shortcomings of mismanagement.

The transporation of non-union employes by Mr. Bache to his Hartford Valley mines evidences the fact that he nor his associates have any intention of observing the law. Armed with high powered guns and with broken boxes of ammunition laying in the bottom of wagons, the recruits were conveyed to Prairie Creek. Thus did they mount the chip of

defiance on their shoulder and invade the disturbed community which they had previously antagonized.

When informed that the non-union men carried guns with them, special prosecutor Hill stated that the 'non-union men had done nothing more than the citizenship had done in carrying guns with them', as all reports reaching him indicated that in most instances the citizens of the Hartford Valley were armed with high power rifles. This statement is unfair and untrue.'

3556 It is not now difficult to understand the sympathies of the special prosecutor. Never before in the history of an industrial conflict have the Federal troops been dispatched to protect armed men to defy the innocent citizenship of a community. Never before has a government prosecutor given his approval of such an occurrence.

For several months, in his endeavor to assume the role of the persecuted to cover his own mistakes as manager of his numerous allied companies, Mr. Bache had a representative in Washington laying the foundation for the sending of Federal troops into Arkansas. But to the surprise of all, a special prosecutor also was sent to inspect this section. Four months from Porto Rico, where he performed detail in the Department of Justice, gave this prosecutor a complete understanding of labor conflicts. When I asked him if the guns carried by the non-union men were 'high powers or shot guns', what do you suppose he said?

'Why, I know nothing about guns myself.'

Then I asked him if he was not investigating a conflict in which guns were supposed to be used. He replied that he was, but that he knew nothing about them. There can be no question but what Mr. Hull is of the opinion that the locked out miners and sympathizers are armed. As an example, the following section of the grand jury:

'Said Moro Colo (otherwise called Morro Collo) and Foster Bean (otherwise called Foster Beam) on July 16, 1914, at Prairie Creek, aforesaid threw stones at certain employes of said Mammoth Vein Coal Mining Company, to-wit: Charles Cheek, Earl Kuntz, Will Bohanon and Levi Brown.'

In the next paragraph of the indictment four men are
3557 charged with having destroyed or attempted to destroy a sack of feed. Wonderful work, isn't it? Think of the National government calling out the Federal troops and sending a special prosecutor into Arkansas to determine the

real purpose of the pebble throwers and the destruction of a sack of feed.

It is indeed ridiculous. When the full investigation of Bache. vs. The People is revealed to the nation the parties responsible for the coming of the Federal troops will be held up to the Nation's scorn.

No one can justify the action of Mr. Bache. No sane person would attempt to justify his course. His first move was to force other concerns to take over his property. He outlawed himself from legitimate business activity. His policy has been to rule or ruin. This is the policy that has victimized the National government officials.

But there is an end to all things. He cannot forever do the things that he has done. He cannot successfully prove that the miners or the citizens are armed to fight him or his hirelings. No representatives of the government can prove this charge. The fact is that the miners are content to take their chances in a Federal investigation that will go to the bottom of the difficulty, and establish the guilt where the guilty will be punished. If Mr. Bache would ever agree to go into an open, uprestricted hearing, the organization of workingmen who he now seeks to exterminate will cooperate with him in every possible manner. But Bache seeks to shield himself under the cloak of the law."

Mr. Drinker: We next offer in evidence from the same
3558 issue of the Journal the article on page 7 thereof entitled "Armed Employes Resented in Hartford Valley."

Mr. Warrum: To which the defendants separately object, renew their objection previously made.

The Court: Objection overruled.

To which ruling of the court the defendants and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "Armed Employes Resented in Hartford Valley.

Fort Smith, Ark., Nov. 20.

The arming of the non-union employes with high power rifles and supplying them with a large amount of ammunition when they were sent down into the Hartford Valley to begin work at the Bache-Denman mines at Prairie Creek Friday is being strongly protested by officials of the miners' union and the citizens of the Hartford valley.

In a statement to the Southwest American last night, Roger B. Hull, special assistant to the Attorney General of the United States, who is in charge of the special grand jury investigation of Prairie Creek troubles, said that he considered the arming of the non-union employes an unfortunate incident and that it was a mistake. Mr. Hull said he did not know the men were armed and that after officials of the government learned of the incident an order was issued for the men to turn over to Major N. F. McClure, in command of the United States cavalry at Prairie Creek, their guns and ammunition.

The men employed by Federal Receiver Bache went from Fort Smith to Prairie Creek in wagons. The Federal guards appointed by United States Marshal Parker, who was
3559 so authorized by Federal Judge Frank Youmans, went to the mining district by railway. The employes were supplied with rifles and boxes of ammunition, which a number of persons declare were broken open in the bed of the wagons. It is said that some of the shells were secured by cavalrymen when the wagons reached the camp.

Union officials declare that the miners and citizens of the Hartford valley have no fire arms of any sort, and that sending armed men into the valley was one of the things which started trouble in the first place.

Emphatic denial is made and exception taken to the alleged statement that there are 3,000 high power rifles in the hands of miners and citizens of the Hartford valley. K. C. Adams, national publicity agent for the United Mine Workers, declares this latest matter will be taken up officially by the union. Adams declares he put the matter up to Mr. Hull and declares that Mr. Hull said that although he had nothing to do with the Receiver's employes, in his opinion the men were justified in taking arms with them when they went to Prairie Creek, as the citizens and miners were armed.

Mr. Adams declares that Major McClure took the initiative in disarming the employes and taking charge of their guns and ammunition; that Major McClure did so without any official notice from the Federal officials at Forth Smith. 'Mr. Bache, as Federal Receiver, is an officer of the court, acting under the instructions of Judge Youmans, and is responsible to the court', said Mr. Adams, 'and the officials of the union are waiting to see if this seemingly unauthorized and inflaming action on the part of Bache will be taken cogni-
3560 zance of by the courts.'

The attention of Judge Youmans was called Saturday to the fact that squads of employes sent to the valley under the authority of the court receiver, were armed with guns and supplied with ammunition. Judge Youmans said that no such authority had been given the Receiver, and that he was advised that commander McClure has taken possession of the guns and ammunition.

In issuing the order for operation of the mines in response to the recommendation of Receiver Bache, the court order carried only one presumption of authority for protecting the proposed employes and property. Specifically that power was placed with the United States Marshal, who was empowered to appoint necessary deputies, who, in protecting the Receiver in carrying out the court order, were to be assisted by the United States military force, now stationed at the mine camps."

Mr. Hull: If the court please, we now offer in evidence plaintiffs' Exhibits marked Nos. 192 and 193, being indictments returned in this court.

Mr. Warrum: The defendants separately object to the indictments so offered in evidence for the reason that they are matters involved in another transaction, another judicial proceeding and not binding on the defendants here. And for the further reason that the Clayton Act controls proceedings under the anti-monopoly statute and provides that a plea of guilty in a criminal proceeding, without proof being offered, cannot be introduced in a civil case.

The Court: The objection is sustained.

Mr. Hull: If the court please, we offer these not on the
3561 ground they are admissions by these defendants. Our position is that the attitude of the national union in deriding this Federal Court, and the National government, and criticizing the indictments as against sack-cutters and such as that,—that in connection with that attitude we have the right to show what these indictments charged these men with. They were charged with burning the property in specific terms. K. C. Adams was the national publicity agent of the national publicity agent of the national organization and when he, and the national organization, through its Journal, held up to scorn the whole process of the Federal Court, we have a right to show the serious charges made against these men.

The Court: The proposition is this: These articles are received here—have been received as statements officially made of one of the parties here. Now, under no possible circum-

stances, can this record of conviction be received in this case under the objections that have been made. A plea of guilty cannot be offered in evidence by the express provisions of that Act. Now, that being true, it is not evidence for that purpose. It occurs to me, however, that if the declaration of one of the parties here, by its official organ, and the voice through which it officially speaks, involves the terms of the indictment, that possibly the indictment itself may be shown to the jury, to the end that they may consider the justice or the injustice of the comment and that they may interpret the comment. I will therefore receive, not the record of conviction, but the indictments that are referred to in the article just read; and that much of the objection is overruled.

3562 Mr. Warrum: If the court please, we reserve our exception to the ruling of the court. This is for the purpose of determining whether or not the criticism, and what was said in the journal, was justified or not?

The Court: Yes.

Mr. Warrum: And of course when we address ourselves to the same issue, it permits us to show that other criticism was justified. They cannot pick out a part only. I do not mean on cross examination, but if they can set up our statements and contradict them, we can justify them.

The Court: I think it should be confined to this field and not go to other fields.

Mr. Warrum: I think so also.

Mr. Hull: Under the ruling of the court we will withdraw Exhibit No. 192 and merely introduce or offer conspiracy indictment referred to in the Journal articles, being exhibit No. 193, and being the original indictment returned in the District Court. (Reading)

3563 "In The District Court Of The United States Of America For The Western District Of Arkansas.

Of the June Term in the Year nineteen hundred and fourteen.

Western District of Arkansas,—ss.

The grand jurors for the United States of America, impaneled and sworn in the District Court of the United States for the Western District of Arkansas at the June Term thereof in the year nineteen hundred and fourteen, and inquiring for that district, upon their oath present, that throughout the period of time from the sev-

enth day of April, in the year nineteen hundred and fourteen, to the day of the finding and presentation of this indictment, there, has been pending, and not wholly determined, in said District Court of the United States for the Western District of Arkansas, a certain cause entitled Mammoth Vein Coal Mining Company vs. M. Hunter et al., the complaint filed in which said cause charged, among other things, that the defendants therein had been guilty of certain acts in said complaint described and were threatening to continue committing those acts unless restrained by the decree of said court, that is to say, acts which said defendants were in fact restrained from doing by the decree which thereafter, to wit, on May 9, 1914, was entered by said court in said cause against certain defendants, to wit, Clint Burris, Sandy Robinson, Charles Robinson and Jim Slankard, and against all other persons acting and co-operating with said defendants, or conspiring or combining with them, and having notice of said decree; said decree being to the effect following:

In The United States District Court For The Western
3564 District Of Arkansas, Fort Smith Division.

Mammoth Vein Coal Mining Company, Complainant,
vs.
M. Hunter, Jno. Bumpus, Gus Reef, Dan Fitzgerald, Will Johnson, Clint Burris, Bob Davis, Chas. Bock, Leo Bock, Edgar Davenport, Tanny Gillilio, Joe Ramona, Sid Shaw, Lewis Ferietti, Tom Rodden, A. Ramona, Fred Dodenhaufer, Joe Greaveno, Sandy Robinson, Rodney Robinson Charles Robinson, Marion Hulsey, Madge Hulsey, Bud McInnis, M. Pannaccini, Heo. Mannick, Jim Slankard, Sam Wann, Virgil Wann, Peter McMulland, John Graham, Sam Ward, J. W. Howard, A. S. Howard, Rob Raiserback, Joe Loyd, Phelix Barrone, D. Turnatti, Andy Kyle, Dave Wilkinson, Jesse Griffin, and G. G. Daniels, Defendants.

Now on this day came the complainant by Jas. F. Reed and James B. McDonough, its solicitors, and the defendants by their solicitors, Ben Cravens and Webb Covington, and the defedants having filed answer herein, this cause came on to be heard upon the evidence introduced and argument of consel. And thereupon upon consideration thereof, it was ordered, adjudged and decreed as follows, namely:

That this cause be dimissed as to said defendants, M. Hunter, Jno. Bumpus, and Peter McMulland.

And it was further considered, ordered, adjudged and decreed by the court that as to all the other defendants named in the caption hereof, and each of them, and all other persons acting or co-operating with defendants, or conspiring or combining with them or any person having notice of this order be and the same are hereby perpetually restrained individually and collectively from interfereing with, injurying, obstructing or stopping by force, threats or intimidation any of the business of complainant, and from in any manner interfering with the property of complainant, or trespassing
3565 upon the same, whether the same is specifically described in this decree or not, which property is generally described in such complaint as Prairie Creek Coal Company Mine No. 4; and Mammth Vein Coal Company, Mine No. 1, near the Town of Midland, in the County of Sebastian, State of Arkansas, and from entering upon any of the grounds or premises occupied by the complainant as aforesaid for the purpose of interfering with the business of complainant or with the property or employees of complainant, and from compelling by threats and force and violence or by direct or indirect coercion, any of the present or future employees of complainant from performing their duties as such employees, or in doing any act whatever in furtherance of a design to restrain or prevent by unlawful conduct, complainant from operating its said mines, and what said defendants and each of them, and such persons unlawfully associating or conspiring with them, or having knowledge of this order, be further restrained from in any manner unlawfully interfering with any person or persons that the complainant may hereafter bring or cause to be brought to its said mines heretofore referred to, or from encouraging or abetting any person or persons to threaten or coearce, directly or indirectly, any person or persons that may enter or continue in the employment of complainant, and that they and each of them, their confederates, or associates or persons having knowledge of this order be enjoined from assembling in or upon the premises of complainant, for the purpose of holding disorderly or riotous meetings, or for the purpose of effecting unlawful interference with employees of complainant or with its property and from in any manner damaging or destroying the property of complainant.

It is further ordered that printed copies of this de-
3566 cree be made and posted at and about the said mines of complainant and at other public places in the said County of Sebastian and State of Arkansas.

It is further ordered that the Marshal of this district be and he is hereby directed to adopt such measures and use such means as may be necessary to enforce this decree.

It is further considered, ordered and decreed by the court that the complainant have and recover of and from the defendants above named, except the said M. Hunter and Jno. Bumpus, and Peter McMulland all its costs herein laid out and expended, and may have execution therefor, and jurisdiction of this case is retained for the purpose of taking such action herein as the court may deem necessary for the enforcement of the decree.

Filed
May 9, 1914

FRANK A. YOUMANS,
Judge.

Wm. S. Wellshear, Clerk.
By R. F. Salzman,
Deputy Clerk.

And that in and by the above mentioned proceedings in said cause, and for the reason that said cause throughout said period of time has been, and on the day of the finding and presentation of this indictment still is, pending in said court for further action by said court concerning the subject-matter of the litigation in said cause, justice has been and is being administered in the same court in that cause.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that certain of the persons named in said complaint and decree, to wit, said Clint Burris, Sandy Robinson, (otherwise called Sandy Robertson)' Charles Ro-
3567 binson), otherwise called Charles Robertson), and James Slankard, (otherwise called Jim Slankard), and certain other persons covered by said decree as persons acting, co-operating, conspiring and combining with the persons named in said decree, to wit, Peter R. Stewart (otherwise called Pete Stewart), Bee Trout, Valentin Burrillo (otherwise called Valentin Buriola), John Manick, Moro Colo (otherwise called Morro Collo), William Reed (otherwise Called Bill Reed), Michael Ryan (otherwise called Mike Ryan), Foster Bean (otherwise called Foster Beam), Charley Johnson (otherwise called Blue Johnson), James McNamara, Charles M. Blackburn, Bruce Jordan, Marvin Ray, Ernest Nein, James Z. Crossley, Frank Crossley, Marvin Stanfield, William W. Roberts, John Champion, Dave Branch, Jesse Edwards, Fred Holt, and Oscar Layton, (all of said persons so named in and covered by said decree being hereinafter referred to

together as defendants in this indictment), continuously and at all times during said period of time from April 7, 1914, to the day of the finding and presentation of this indictment, at and within said Western District of Arkansas, each and all of said persons well knowing that justice was so as aforesaid being adminstered in said cause so pending in said court, and having notice of the existence and scope of said decree, and intending to obstruct the due adminstration of justice in said court in said cause, unlawfully have combined, conspired, confederated and agteed together, and with divers other persons to said grand jurors unknown, to commit an offense against the United States; that is to say, the offense of corruptly, and by threats and force, and by threatening letters and threatening communications, influencing, obstructing and impeding the due administration of justice in said District Court for the Western District of Arkansas, to-wit, the justice so as aforesaid then being administered in said
3568 court in said cause; to be accomplished in the manner following:

Said defendants to this indictment were, by the use of force upon the threats of injury towards the bodies of miners, laborers and employees of, and of all persons seeking employment with, said Mammoth Vein Coal Mining Company, complainant in said cause and named in said decree, to prevent said miners, laborers, employees and persons from operating the mines of said company and carrying on its business of mining coal, in said Western District of Arkansas to wit, at and near Prairie Creek, in Sebastian County, notwithstanding said company has been and is desirous of and endeavoring to carry on its said business, and in so doing said defendants to this indictment were seriously to interfere with and irreparably to injure said business of said company; and said defendants to this indictment, in accomplishing the object of said conspiracy and for obstructing the due administration of justice in said court in said cause, were also, by the use of force, to trespass upon and injure, and by the use of explosives and fire, to injure and destroy, the property of said company then and there being used by it in the carrying on of its said business; were to send by mail to the Judge of said court letters threatening him with injury and death, for having conducted the proceeding in said cause, and to prevent him from further proceeding therein; were to send communications to newspapers circulated in said district directed to said Judge and threatening him and the officers of said court with injury and death if they continued to be concerned in the enforcement of

said decree or otherwise active in the adminstration of justice in said court in said cause.

3569 Overt Acts.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, said several defendants to this indictment, during said period of time and at the several times and places hereinafter mentioned in that behalf in connection with their several names, have done and committed the several acts following; that is to say:

1. Said James McNamara, James Slankard (otherwise called Jim Slankard) and said Charles Robinson (otherwise called Charles Roberston), on July 16, 1914, at Hartford, in said County of Sebastian organized and addressed a meeting of union miners urging attacks upon the employees and mining property of said Mammoth Vein Coal Mining Company, and distributed fire-arms among the persons attending said meeting.

2. Said James McNamara, William Reed (otherwise called Bill), Sandy Robinson (otherwise called Sandy Robinson), Bruce Jordan, Clint Burris, Ernest Neim, Frank Crossley, James Slankard (otherwise called Jim Slankard), Charles M. Blackburn, Bee Trout, Valentin Burrillo (otherwise called Valentin Buriola), Marvin Ray, Michael Ryan (otherwise called Mike Ryan), and Charles Robinson (otherwise called Charles Robertson), on July 17, 1914, at Prairie Creek, in said Sebastian County, took part in an attack upon the employees and mining property of said Mammoth Vein Coal Mining Company, in which they severally discharged firearms upon said employees and destroyed by fire and explosives said mining property.

3. Said Peter R. Stewart, (otherwise called Pete Stewart), on May 25, 1914, at Midland, in said Sebastian
3570 County, addressed a crowd of union miners, whose names are to said grand jurors unknown, in favor of forcibly interfering with the employees and business of said Mammoth Vein Coal Mining Company, and offered to furnish fire-arms to such miners for that purpose.

4. Said Moro Colo (otherwise called Morro Collo) and Foster Bean (otherwise called Foster Beam), on May 16, 1914, at Prairie Creek aforesaid, threw stones at certain employees of said Mammoth Vein Coal Mining Company, to

wit, Charles Cheek, Earl Kuntz, Will Bohannon and Levi Brown.

5. Said Sandy Robinson (otherwise called Sandy Robertston), Moro Colo otherwise called Morro Collo), Charley Johnson (otherwise called Blue Johnson) and James Slankard (otherwise called Jim Slankard) on June 10, 1914, at Prairie Creek aforesaid, cut and destroyed a bag of feed belongto said Mammoth Vein Coal Mining Company.

6. Said Sandy Robinson (otherwise called Sandy Robertson,) Clint Burris and John Manick, on June 15, 1914, at Prairie Creek aforesaid, assaulted one John Shaleen, an employe of said Mammoth Vein Coal Mining Company, for the purpose of preventing him from inducing one Tony Boraski and one Abe Harris to enter the employment of said company.

7. Said James Z. Crossley on June 27, 1914, deposited in a railway post-office on the Rock Island Railroad, for mailing and delivery to the Judge of said United States District Court for the Western District of Arkansas, a certain letter, to wit a letter of the tenor following:

July 27th, 1914.

Judge Youmans,

Dear Sir

You know the acts you have Decided upon.

As a warning friend, we Caution you to be more con-
3571 siderate on the administration of your Decisions.
You are notified to Comply with the requirements of Your Office.

If such is not complied With very shortly—theres likly to be a unexpected Change between your Soul and fleshy temple; and you Won't know the day nor the time, nor by What Means Such will take Place; Still we don't want to Act Courdly But give you a little time to act differently, and at any rate you will have a little time for future Preparation, for that Place Called Heaven. You are Weighed in the balence and found Wanting.

there's A great Change soon to Happen.

Signed FOREWARNED.

This is a barking dog, and if teased much Longer will Bite.

PRESIDENT OF COMMITTEE.

8. Said John Champion, Dave Branch, William Reed (otherwise called Bill Reed), and Oscar Layton, on October 31, 1914, at Hartford, in said Sebastian County, forcibly rescued said Sandy Robinson (otherwise called Sandy Robertson) and Ernest Neim from the custody of John Black, then a Deputy of the Marshal of the United States for said Western District of Arakansas.

Conclusion.

And so the grand juorors aforesaid, upon their oath aforesaid, do say, that said defendants to this indictment, to wit, Clint Burris, Sandy Robinson (otherwise called Sandy Robertson), Charles Robinson (otherwise called Charles Robertson), James Slankard (otherwise called Jim Slankard), Peter R. Stewart (otherwise called Pete Stewart), Bee Trout, Valentin Burrillo (otherwise called Valentin Buriola), John Manick, Moro Colo (otherwise called Morro Collo), William Reed (otherwise called) Bill Reed), Michael Ryan) otherwise called Mike Ryan), (Foster Bean otherwise called Foster Beam), Charley Johnson (otherwise called Blue Johnson),
3572 James McNamara, Charles M. Blackburn, Bruce Jordan Marvin Ray, Ernest Neim, James Z. Crossley, Frank Crossley, Marvin Stanfield, William W. Roberts, John Champion, Dave Branch, Jesse Edwards, Fred Holt, and Oscar Layton, during the period of time, at the place, and in Manner and form, aforesaid, unlawfully have conspired to commit an offense against the United States and said parties have done acts to effect the object of the conspiracy; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided."

(Signed) ROGER B. HULL,
Special Assistant to
the Attorney General.

List of Witnesses.

T. D. Malloy
H. Tipton
W. V. Womack
Mrs. S. B. Rankin
T. A. Morris
Paul Little
Dr. E. B. Jones
Danne Yarborough
Samul C. Thomas
Mrs. Artie Robinson
J. F. York
T. J. Porter

D. F. Dickson
A. Booth
Mike Douthitt
Ewell Douthitt
John Shaleen
Charles Cheek
Harry Dunlap
Clarence Shaleen
C. H. Langford
Lee Bishop
John Parrish
Mrs. Sarah Sylesberry
Arch M. Caldwell
Leo Schell
J. Oliver Johnson
C. F. Finley
B. Harris
Ira Steel
3573 H. W. Morgan
W. B. Kissinger
J. Peters
A. W. McGee
E. B. Johnston
S. T. Moore
Will Bohannon
J. W. Baker
H. H. Randolph
John Minturn
M. L. Dodd
Mrs. Ray Finley
C. B. Windham
Mrs. Olive Heatherly
E. L. Harman
Albert Sysberry
J. W. Sylsberry
Robert Box
M. S. Goddard
B. L. Sorrels
John B. Hayden
Jesse M. Combs
Lee Clayton Faught
Pleasant B. Baker
W. A. Manley
W. H. Argo
John Smedley
L. M. Lawrimore
Tom A. Barclay

J. M. Meeks
Wm. C. Echols
Thomas Black
R. Ray
R. C. James
J. C. Vansickle."

The Court: At this point we will adjourn until Monday morning, November 12th, 1917, at 9:30 o'clock, a. m.

3574 Ft. Smith, Ark., Monday, November 12th, 1917.

9:30 o'clock, a. m.

Pursuant to adjournment as last aforesaid, came all of the parties as before on Monday, November 12th, 1917, at 9:30 o'clock, a. m., and the trial of the case proceeded as follows:

Mr. Drinker: If the court please, we offer from the proceedings of the convention of the United Mine Workers for the year 1916, being Exhibit 29q, the following passages.

Mr. Warrum: The defendants separately object to the introduction in evidence of extracts from the National convention for the year 1916 for the reason that it is more than two years after the institution of this suit, and would not be binding on the defendants or any of them, in the way of ratification.

Mr. Drinker: It is to show the ratification of the matters alleged.

The Court: The motion is overruled.

Mr. Warrum: I would like to have been heard, but it does not matter because as I understand, at the termination of this we will make a motion and ask to make a record and be heard at that time.

The Court: You shall be heard at the close of the evidence. I am disposed to take the most lenient view in allowing the record to be made; otherwise you have no record. I am disposed to permit the record to be made.

Mr. Warrum: That is the reason that we have urged these matters in our behalf without lengthy argument.

The Court: Many of these matters,—where there is doubt, they must be resolved in favor of the record.

Mr. Warrum: I appreciate that action on the part of
3575 the court.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: On page 21,—this is a convention of the United Mine Workers, National organization, for 1916; on page 21 is the beginning of the report of Committee on Credentials (reading): "Auditor Donaldson, for the Committee, stated that printed copies of the credential list would be distributed to the delegates, and stated that since the report had been sent to the printer the seat of John Chance, Local No. 732, District No. 12, and Robert Bolden, Local 3003, District 15, had been contested. These names appeared in the list but the Committee did not recommend their seating."

The Court: I do not think the jury can hear this, Mr. Drinker.

Mr. Drinker: I am just coming to the part.

The Court: Then read what you wanted in the record.

Mr. Drinker (reading): "The Committee stated that the cases would be taken up later and reported to the convention". This is to show that the Committee on Credentials reported.

Then, on page 413 is the final report of the Committee of the Credentials, (reading): "Auditor Donaldson, for the Committee on Credentials read a list of delegates whose credentials had arrived during the week and recommended that they be seated and the names added to the completed list. The recommendation of the Committee was concurred in."

And further on down on the page (reading): "Auditor
3576 Donaldson. This completes our report. The list now includes all changes, transfers and all the contested delegates. Upon motion the report of the Committee as a whole was adopted. Following is the complete report of the Committee on Credentials."

The only part we want to read is found on page 448, one line, "No. 2110, Camp Buelah, Ark; P. R. Stewart, Ft. Smith, Arkansas, one vote"; showing him to be one of the accredited delegates.

From the same proceedings, report of President White, beginning on page 22. (Reading):

"Reports of Officers.

Vice-President Hayes in the Chair.

Report of President White.

To the Officers and Delegates of the Twenty-fifth Consecutive and Second Biennial Convention of the United Mine Workers of America,—Greeting:

Following a time honored custom, as President of the International Union, I submit a resume of the affairs of our organization, together with the chief matters that have occurred during the biennial period now drawing to a close."

Now omit to page 81 (reading):

"Litigation.

This administration has been confronted with almost every conceivable form of opposition by the enemies of our movement. We have been engaged in litigation and our people have been subjected to the worst form of persecution at the incitation of the coal companies and their emissaries in the various non-union sections of the country."

I now skip to page 82, under the paragraph entitled,
3577 "Arkansas", as follows (reading):

"During the trouble in Arkansas a number of our members and representatives were indicted in the Federal Court and some were fined and imprisoned."

And then the last paragraph of that item (reading):

"Thus it will be seen by the attempts set forth in these proceedings that our enemies have been doing all in their power to menace the progress of our organization. Numerous other cases of injunction and litigation have been encountered in defending our people from prosecution and in protecting the organization's financial resources, but we will press, vigorously opposing under all circumstances any attempt to throttle organization by such illegal methods. We will fight to the utmost at all times to defend our persecuted fellow workers who are the innocent victims of powerful interests which would destroy the right of the men of labor to organize and enjoy the benefits thereof."

Now on page 205, "Appointment of Committees".

"The President announced the following appointments". Now on page 206 (reading):

"Committee on Officers' Reports.

John T. Dempsey, District No. 1.
A. G. Morgan, District No. 22.
Frank Hefferly, District No. 12.
John McLennan, District No. 15.
Thomas Kennedy, District No. 7.
Martin J. Flyzik, District No. 10.
Joseph Karnstine, District No. 25.
William Hargest, District No. 5."

3578 We now offer from volume 2 of the same proceedings, being Exhibit 29r, at page 784.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker (reading):

"Report of Committee on Officers' Reports.

Delegate Morgan, Secretary of the Committee, reported as follows:"

I will omit from the report immaterial items and skip to page 790 (reading):

"Litigation.

Satisfactory settlements of important litigation against the organization seem to indicate that legal impediments to our progress are slowly giving way and we approve of the action of the organization in its continued fight to have our rights emphasized and recommend approval of this attitude until our rights are amply protected.

The report of the Committee was adopted unanimously."

If the court please, we now offer in evidence from the United Mine Workers Journal of December 3rd, 1914, page 13, being Exhibit 31bb and cc.

Mr. Warrum: The defendants separately renew their objections made to extracts from the Journal, heretofore made, and especially those articles appearing after the institution of the suit.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: Page 13, first column (reading):

3579 "Causes of the Arkansas Trouble.

(By K. C. Adams.)

Throughout the nation the agitation for a square deal in the investigation of labor conflicts is growing. Everywhere the people are rebuking public officials who dispense uneven justice. The protest against favoritism has crystalized public opinion in defense of the persecuted. Time was when courts and commissions could in the most brazen manner ignore the rights of the workers and convict regardless of evidence members of trade unions who dared protest discrimination. But that day and time has passed. Every attempt during recent years to override the expressed will of the people has met with universal condemnation.

Just now when the spirit of boosting is enlivening the nation, with commercial organizations on the offensive heralding the advantages of particular locations, Arkansas is forced to retreat to the defensive to remove the shame of a most deplorable industrial conflict. The eyes of the people are withdrawn from Colorado, from Butte, from West Virginia and focused upon the Arkansas troubles. And everywhere the question is being asked, how did it all happen? But how few really know—that it all resulted from the fact that one single promoter, at the head of a dozen interlocking companies simply sought to damn a community in which he had made a huge failure.

What will the outcome be? How soon will the real parties at fault, be located and punished? And then again how are we go about the work, in a manner that will eliminate all suspicion of favoritism. These questions present themselves squarely to the thinking citizenship.

3580 The Federal Grand Jury after several weeks work adjourned, returning thirty-five indictments against miners and sympathizers. The foreman of the jury, Mr. C. E. Speer, is at the head of the [a] large wholesale hardware company. He is also a stockholder in one of the Bache companies. He stated on the 25th, that he had transferred his stock shortly before the first trouble in April, but the fact is that such a transfer has never been recorder. Mr. Speer sold to Mr. Bache the high power guns to equip the guards

that terrorized the community and brought about the riots that shamed the state.

When the newspapers and magazines have carried this story to every section of the nation. When the people are informed of Mr. Speers connection with Mr. Bache and then turn to the findings of the Federal Grand Jury, do you think that they will look with favor upon the indictments returned.

Everybody is aware that trouble occurred at Prairie Creek. Everybody concedes the fact that the public welfare demands that the machinery of the law be put in operation to detect and punish the offenders. But the advanced trend of thought will not tolerate any possible connection that savors of favoritism.

And then there is the indictment that was returned against an aged consumptive, who resides 125 miles from the scene of the trouble. Still another against a young man who was at work in the Spadra coal fields and who was not concerned in the affair, but who was indicted simply because he expressed himself while a passenger on a train in favor of organization.

3581 It is not material to the final result whether Mr. Speer was biased as foreman of the jury. The reflection of his close friendship for Franklin Bache will forever tend to discredit the work of the jury as a whole.

The world is alive to the doctrine that the best way to boost business is to get at the evil that is retarding business. Likewise the best way to enforce the law is to eliminate the causes that promote lawlessness. The Bache properties, located in the midst of a rich coal field, failed to pay dividends. This fact must not be overlooked as the fundamental evil that resulted in our present day troubles. All the other coal companies doing business in the field were making money and paying dividends while the Bache companies were failing. If this be true isn't it reasonable to assume that mismanagement on the part of Bache himself placed the companies of which he was the active head in bankruptcy. Thus it is very plain that the management was the fundamental evil and the thing that should have been remedied.

Bache sought to cure his industrial ills with his own remedy. That remedy consisted of a program whereby he hoped to pay less wages, extract more work from his employes and get along with few safety devices in his mines. The community simply resented the attempt of Bache to lower the standard of working conditions. It was a home rule protest

for the maintenance of a set standard of living and working conditions. Then there was the character of the men he sought to employ. There was nothing surprising in this protest. Who ever heard of a community welcoming a band of ex-convicts to come and live among them.

3582 The records of the Bache guards disclosed such [indent-ty] and is consequently undisputable proof that the protest was warranted. J. L. Prince, guard, served time in the Arkansas penitentiary for shooting a man in the back at Ozark. He has been in jail many times for minor offenses. Dan De Santis, another guard, served time in the Federal penitentiary, having been sentenced by Judge Youmans himself. Riley Baily, also guard, has for years been busy rounding out a notorious record of crime. He was one of a gang that beat into insensibility former President Stewart of the mine workers in the darkness of the night near Himtown, Ark.

Why did Bache import this type of men? In the testimony offered in the Federal Court, on the occasion of the application of Bache for an injunction, the following extract from a letter written by O. T. Looper to his wife, he was then in in the employ of Bache, was read into the record:

'We have accomplished what we intended from the beginning, you see for yourself by reading the papers. You see the restraining order from the Federal Court.'

Questioned. Looper stated that the letter meant just what it said. This being true it is very evident that Bache planned trouble in order to hide his own mistakes and then seek shelter under the protection of the Federal Court.

Bache was the first to violate the law by supplying his employes with guns. He refused to take part in the legal investigation that was conducted by Commissioner Clary. This hearing proved beyond doubt that Bache in arming his
3583 guards promised them immunity from the law. Evidence was also produced that proved Bache's lack of understanding of mining conditions.

For seven months Bache has continued his defiant policy. Honest workingmen, capable and industrious who stinted themselves for years that they might boast the ownership of a home, have been forced into idleness. Families have braved the disastrous period on half rations and made old clothes do.

A happy and prosperous little valley has been transformed into war like territory with depressed business and the spirit of unrest as the determined citizens grew more determined to

sacrifice their all that the cause of square dealing would triumph.

The yellow tents of Uncle Sam now decorate the hillside of the mining property at a great expense to the government as protection to two [pidgeon] hole mines that in the aggregate will not produce 100 tons of coal per day.

But the presence of troops will not settle the difficulty. They will not remove the shame that stains the name of Arkansas as a result of the manipulations of this man Bache. There is only one way for the people to readjust the industrial differences and that is to see to it that this man Bache is defeated in his attempt to hide his own shortcomings under the cloak of the law and the so-called hot heads will silence their protest.

One-sided investigations will not, however, accomplish this result. Evidence furnished solely from fanatical partisans, unreliable individuals or persons representing cliques will not uncover the hidden connections. The time has arrived
3584 in the growing complications surrounding the present conflict when it is absolutely necessary to safeguard every agency of the law above suspicion.

Corporations that persist in violating the law pertaining to and governing the operation of their industry should be made to suffer to the same degree that the individual who loses control of himself in the battle of self-preservation and commits an overt act. The fact that Mr. Bache is receiver should not make him immune from punishment.

Until a thorough and impartial probe is had and the people are acquainted with the hidden complications the citizenship cannot hope for permanent peace.

It is impossible to choke the facts. The people demand and are entitled to know."

Mr. Drinker: We offer from the Mine Workers Journal of April 15th, 1915, page 5, the article entitled "Ludlow and Arkansas".

Mr. Warrum: To which the defendants separately object for the reasons heretofore given to the introduction of extracts from the Journal, and especially those after the institution of this suit.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "Ludlow and Arkansas.

In memory of Ludlow, let us once more pledge ourselves to use our every influence to make a repetition of such horrors impossible.

Ludlow was the direct result of the government, local
3585 as well as state, in the hands of the corporation. Ludlow points the necessity of closer political affiliation of the workers on some broad basis upon which we can all stand.

We cannot close our eyes to the fact that today we have absolutely no assurance against repetitions of the horrors of Ludlow in the next conflict of any magnitude between the employers of labor and the workers; that is, so far as the restraining power of the government, state or national, provides.

We cannot but recognize the fact that when the workers of Arkansas took steps to protect themselves and their families from like fate as befell the victims of murderous greed at Ludlow, recognizing that there was no power of government, state or national, that would grant them such protection, that then the power of the United States government was invoked to punish these miners for so protecting themselves and their loved ones.

Think of it! Not one of the fiends who took part in the debauch of murder and arson at Ludlow has ever been brought to trial; state or nation cannot bring to justice these known murderers around whom the great corporations have thrown their protecting arms, while the miners of Arkansas who could see a like fate awaiting them and their loved ones if they remained inactive are made to pay the penalty in prison for long periods of years.

The federal government confessed itself helpless to protect the iron workers from the sluggers, the thug tactics of the employing corporations, but when the workers were forced to retaliate in kind the prison yawned for them even before their trials were concluded, the verdict rendered.

3586 The answer is that we must strengthen our lines on the economic field, larger organizations, closer affiliations between organizations; a political program on which we can all unite, all the workers, and take our part in the political governments of state and nation.

This is the lesson that is forced upon us by comparing Ludlow and Arkansas."

Mr. Drinker: We next offer from the Journal of October 14th, 1915, page 10, the passages marked.

Mr. Warrum: To which the defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "Affairs of District No. 21 are turned over to the International Organization by Special Convention. President White appoints Temporary Officers Pending Election.

(By K. C. Adams.)

McAlester, Okla., Oct. 8."

Then skip to page 11 (reading):

"The committee informed the representatives of President White that each of the names submitted had agreed to serve harmoniously together in the conduct of the organization's business, and that not one of them named would under any circumstances become a candidate for office in the election which, under the convention's orders, must be held not later than forty-five days after the convention's adjournment."

Then under list of officers (reading):

3587 "Board Members—P. R. Stewart, Arkansas; Ed Cunningham, Texas; Ira Decker, Oklahoma, and Thomas Sexton, Arkansas."

Mr. Drinker: From the Mine Workers Journal of October 7th, 1915, page 11, we offer the article entitled "President White Decides". This is a little different from the others. This is for the purpose of showing that in regard to the President of another District, at the same time, President White took action to prevent him from being a candidate for re-election; in order to show the power the President had at that time over District affairs and which he was exercising at that time.

Mr. Warrum: The defendants separately renew their objections for the reasons given, and for the further reason that counsel states an inference.

The Court: The objection is sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Drinker: The article which we offer is on page 11 of October 7th, 1915, beginning at the head of column 1 and on through to the middle of column 2.

(Article so offered by plaintiffs and excluded by the court, is in the following words):

"President White Decides.

Alex Howat of Kansas Cannot Be Candidate For Office Until Charges are Cleared.

Miners of Entire Country Interested. No Suspicion of Graft Taint Can Be Tolerated in Officials.

3588 The following letter of instruction and information has been sent by International President John P. White to the President of District No. 14, Kansas, Bernard Harrigan, and to the members of the District No. 14 Executive Board. Copies have been sent to all the locals in that district:

'Albia, Iowa, Sept. 27.

Mr. Bernard Harrigan, President, District No. 14, U. M. W. of A., Pittsburg, Kan:

Dear Sir and Brothers:—I beg to acknowledge receipt of your telegram demanding interpretation of the following resolution that was unanimously adopted by the International Executive Board:

'That this Board confer upon President White and his assistant resident officials, power to act in behalf of the Board in connection with this matter in Kansas, so that the honor and integrity of the United Mine Workers of America, and of its officials, will be maintained.'

I might say that it was brought to our attention that an attempt was being made to have Alex Howatt become a candidate for president of District No. 14, and in order that the honor and integrity of our movement would be preserved, power was delegated to the resident officers by the International Executive Board to deal with this situation and to take such action as would best protect our movement.

Alex Howat resigned his position rather than face his accusers. He refused to obey the directions of the International Executive Board and enter suit against his alleged defamers.

He has failed to comply with the instructions of the special convention of District No. 14, which ordered him to
3589 go to court, and the fact that he resigned his office and further refused to go to court, notwithstanding the International organization placed at his disposal ample funds, and the best legal talent, he has by subterfuge and evasion failed to conform to the directions of either the International Executive Board or the convention of District No. 14. Howat's resignation, as well as his refusal to go to court, is significant, and anyone can place their interpretation upon his actions in these two particular instances.

The United Mine Workers of America have a right to expect the mine workers of Kansas to protect the honor and integrity of our great organization and Alex Howat's name should not be permitted to be placed on any election ballot in District No. 14 until he has complied with the instructions of the International Executive Board and the instructions of the Kansas convention.

I therefore hold that you are fully justified, if Howat should attempt to become a candidate, to prevent his name from appearing on your ballot. You are not only justified, but it is your duty as an Executive Board to see that he will face these charges in the manner and way that he has been directed to do so, and until he does so he should, by every moral obligation, forfeit the confidence of the miners of District No. 14.

In making this decision I am fully conscious of the responsibility attached to my ruling, but I stand ready and willing to come to Kansas and bring attorney Kendall and meet Alex Howat and the miners of Kansas and explain in detail the course I have pursued. In addition to this I shall have
3590 to answer to the mine workers' convention for all of my official acts, which I will cheerfully do, and I shall insist that our International convention make an exhaustive investigation into these graft charges and if possible bring all parties into court if I can before the statute of limitation expires.

Copy of this circular is being sent to the local unions in District 14 in order that they may be fully informed of the course I have advised.

Yours very truly,
JOHN P. WHITE, President."

Mr. Drinker: We now offer from the convention of the United Mine Workers, District 21, Exhibit 194, convened at McAlester, Oklahoma, September 21, 1915, as follows:

Mr. Warrum: To which the defendants separately renew their objection. These proceedings occurred after the institution of this suit.

The Court: The objection is overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: From page 84, the final corrected report of the Credentials Committee, the following names as appearing in that report. (Reading):

"Local Union 719, Dewar, Oklahoma, James Doyle, one vote.

Local Union 586, Huntington, Arkansas, M. L. Cisco, one vote.

Local Union 1172, Hartford, Arkansas, Joe York, one vote.

3591 Local Union 1526, Hartford, Arkansas, Oscar Layton, one vote.

Local Union 1565, Prairie Creek, Arkansas, A. S. Howard, one vote.

Local Union 5769, Hartford, Arkansas, P. R. Stewart, Sr., one vote."

3592 Mr. Drinker: From the report of the President of District 21, President Hanraty, Page 87.

"President Hanraty: The next order of business is the report of officers. (Reading):

To the officers and delegates to the special convention of District 21, United Mine Workers of America,—Greetings:".

Omitting then to page 91:

"Prairie Creek Strike.

Shortly after the first of April I met R. W. McFarlane of Greenwood, Arkansas, one of the attorneys for the miners who claims we still owe him $2,500.00 and wanted the money as soon as possible as he claims he did a great deal of the work. In talking over the strike and the lawsuits that fol-

lowed by a number of parties, statements were made by them that led me to believe that some of them at least should be investigated. I went over the records of our office, but I could find no reports about how much money was spent and how it was spent nor who spent, as there were no receipts except one I received from Ed Cunningham while he was acting president, which reads as follows:

"Ft. Smith, Ark., Nov. 8, 1914.

Received of Ed Cunningham, certified check for $4,000.00 payable to bearer, which check I have cashed and deposited in bank to be held as securing me for making bail bonds for Clint Burris and John Manick, in the sum of $2,000.00 each.

(Signed) BEN CRAVENS."

I waited on attorney Ben Cravens to find out what was done with the money and he informed me check was deposited in the City National Bank, Nov. 9th. On Nov. 23, 1914,
3593 the check was turned over to Webb Covington, our attorney."

Omit the next paragraph, down to the bottom of the page.

"In regard to the $50,000.00 that was borrowed from Dist. 12, Springfield, Ill., for the purpose of helping buy the Prairie Creek property, I desire to state that I believe an investigation should be made by a joint committee of this district and our International Organization, and a report made to show the whole transaction and why the property was not bought."

Mr. Warrum: Now, if the Court, please, the defendants renew their objection because this manifestly relates, from the statement made by counsel to an effort,—

The Court (interrupting): Let me see it.

Mr. Drinker: I will withdraw that, if your Honor please.

Now, on page 123, the remarks by Delegate Howard, being

"Delegate Howard: Being one of the men from Prairie Creek, I am in favor, highly in favor, of that man being allowed to come up and make a statement. I would hate to go back to my home and have people ask me why that this man Covington was not allowed to kind of clear this thing up before this convention. Every delegate is in this convention is here to learn the facts. We don't want anything but the facts. I am not allied with any faction or anything, but I am here to see justice meted out where justice is due. We want the facts and no untold affairs here. The committee brought in no

recommendation here, and it is up to this convention to say what shall be done in this matter, and I am in favor of that man coming on this floor and making a statement. There are a few of us people around Prairie Creek that have been branded as anarchists. My name has been heralded all over the country as an anarchist, and an undesirable citizen.
3594 It has been handed to the public until my own class, my own fellow workmen, have branded me the same way, and I am in favor of this thing being cleared up. (Applause.)"

Mr. Warrum: The defendants separately renew the same objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants and each of them, at the time duly excepted and still except.

Mr. Drinker: On page 124, the remarks by Board Member McLaughlin.

"Board Member McLaughlin: I was one of that old Board, and in Hartford during the entire trouble."

Mr. Warrum: The defendants separately renew the same objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker: And on page 125, (reading):

"National Organizer Dalrymple: I am not a delegate, but I was a former officer in District 21 for four years.

Chairman Thurston: You are not a delegate?

National Organizer Dalrymple: No, sir, but I was a former officer here for four years.

Chairman Thurston. We want to hear from the delegates.

National Organizer Dalrymple: I want to ask the convention if they will permit me to make a statement or two.

Chairman Thurston: I rule you are out of order.

National Organizer Dalrymple: You are going to rule that I am out of order?

Delegate Doyle: I move you that the floor be granted
3595 to National Organizer Dalrymple.

The motion was duly seconded.

Chairman Thurston: There is a motion before the house, brother Doyle.

Delegate Stewart: I rise to a point of order on that ruling. All national officers are allowed a voice.

Chairman Thurston: I want to hear from the delegation from this District, then if the delegation has nothing further to say, then we will hear anybody else.

Delegate Stewart: But he was a member of the old Executive Board, and is a National organizer, and whenever an International President sends officers to a convention, they are allowed a voice. There are some National Board Members here, and I want to know if I am correct in that.

International Board Member Frampton: As far as I know, a National representative has never been refused the floor of any convention of United Mine Workers.

Chairman Thurston: I will retrace my ruling."

Mr. Drinker: On page 162, one sentence, from the remarks of Mr. Covington to the convention.

Mr. Covington: I did not address the convention on that occasion, I was addressing my client.

Mr. Drinker: I am not going to read the speech by Mr. Covington; just merely this sentence here, and I will show it to you.

Mr. Covington: I still object to that.

The Court: Just tell me what it is.

Mr. Drinker: Just that one sentence (showing the book to the Court).

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each
3596 of them, at the time duly excepted and still except.

Mr. Drinker: From the end of Mr. Covington's first remarks (reading):

"I now speak to the members of the old board. Did you fellows tell me to do what I did in the Prairie Creek district?

Delegate Stewart: I, for one, said go ahead, we will protect the members of our organization that got into trouble in the Hartford Valley, to the last ditch.

Delegate Cunningham: That was with the full consent of the board.

Board Member McYachlin: Yes, sir, we told you to go ahead and we would stay with you.

National Organizer Dalrymple: Yes, sir, that is right."

Mr. Drinker: From the same proceedings, page 658.

Mr. Warrum: The defendants renew their same objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading):

"Secretary Douglas: I have a telegram here I want to read: "Fort Smith, Arkansas, October 2nd, 1915, T. B. Douglas, Secretary United Mine Workers, District 21, McAlester, Oklahoma. Have P. R. Stewart come here on first train, need him matter connected with parole McNamara. Also his own case pending at Denver. Have him leave there on first train. It is absolutely essential that he be here early tonight. Covington and Grant."

Chairman Thurston: Gentlemen, give us order now. I will call for the report of the Resolution Committee.

Delegate Plymale: Mr. Chairman, the report we have is on the telegram only.

3597 Chairman Thurston: Yes, sir, that is all.

Delegate Plymale: To the Special Convention: Telegram received this morning from our brother now in Leavenworth, James K. McNamara, calling your attention to the fact that from some cause his pardon has failed; therefore, be it resolved that this convention make another effort in his behalf and as P. R. Stewart, being thoroughly familiar with this case, having made one trip to Washington in this brother's behalf, therefore, we, your committee, recommend that P. R. Stewart be sent to Washington at the earliest date possible and shall be allowed his salary and expenses for making said trip. And we further recommend that the District pay his railroad fare and expenses for the former trip to Washington in behalf of these brother's [bardon].

And we further recommend that James K. McNamara be wired the action of this convention.

Unanimously concurred in by the Resolution Committee.

I move you, Mr. Chairman, the adoption of the resolution.

The motion was duly seconded.

Chairman Thurston: It has been regularly moved and seconded we adopt the resolution as read. Are there any remarks? The question being called for, all in favor let it be known by saying aye; contrary, no. The ayes have it."

Mr. Drinker: Page 929, of the same book.

Mr. Warrum: The defendants separately renew the same objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading):

3598 "Delegate Plymale: Mr. Chairman and Brothers: I will state before reading this that a portion of this resolution was covered in substance by a resolution passed a few days ago, with reference to the telegram received from Brother McNamara. I want to make that statement before reading this, so that we will not get confused. (Reading):

To the Officers and Delegates of the Special Convention:

We the undersigned submit for your consideration the following bills that were contracted and paid by Local Unions No. 1526 and No. 1912, located at Hartford, Ark.:

Same being contracted in connection with the trouble that arose at Prairie Creek, Ark., and of which bills read as follows:

"Hartford, Ark., Sept. 20, 1915.

District No. 21, U. M. W. of A.
to
John Conroy, Dr.

To railroad fare to Kansas City and return,	$20.00
To street car fare from Kansas City to Leavenworth and return, including hotel bills, etc.	10.00
To four days' services at $3.90 per day,	15.60
Total	$45.60

This bill is for services in connection with the presentation of petitions for the parole of James McNamara, now confined in the Federal Prison at Leavenworth, Kans., on a charge of conspiracy in connection with the Prairie Creek trouble.

(Signed) JOHN CONROY."

"Expenses incurred by Oscar Layton and James McNamara as a Committee elected by Local Union No. 1526, to see Judge Little in connection with James K. McNamara parole.

	One day, Oscar Layton,	$ 3.90
3599	Transportation and hotel expenses,	$ 3.35
	One day, James McNamara, Sr.	3.90
	Transportation and hotel expenses,	3.35
	Total	$14.50

(Signed) OSCAR LAYTON."

"P. R. Stewart.

September.

Date	Salary			
9th	$3.90	Railroad fare one trip, return Fort Smith to Hartford and Kansas City return,		$20.00
10th	3.90	Two return trips,		
11th	3.90	Kansas City to Leavenworth,		
12th		Hotel bills, four days,		10.00
13th	3.90	Fort Smith, Little Rock	4.77	2.00
14th	3.90	Little Rock, Fort Smith,	4.77	2.00
		Total expenses,		$65.04

Note: This bill is for services with getting petitions and presenting them to the proper Board in trying to get Jim McNamara out of the Leavenworth pen, who was given two years in connection with the Prairie Creek trouble.

The Locals in Hartford borrowed one hundred (100.00) dollars to help to get this Brother out of Leavenworth.

Yours truly,

(Signed) P. R. STEWART."

The foregoing bills make it plain that they are bona fide claims and made in the interest of those who are members of our organization, while they cannot at this time raise their voice in behalf of themselves, and therefore, the above men-

tioned locals made it possible for their appeal for executing clemency to reach those in authority to grant same.

3600 Therefore, Be it Resolved, That this convention authorize the payment of said bills hereinbefore mentioned by reimbursing said Local Union for same.

H. C. JONES, L. U. No. 197
JONATHAN FOSTER, L. U. No. 2889
ARTHUR CROSS,
MAT BAYLIN, L. U. 1136."

Concurred in by the Committee.

Delegate Hobbs: I move we adopt the report of the committee.

The motion was duly seconded.

Chairman Thurston: It has been regularly moved and seconded that the committee's report be adopted. Is there any discussion? All in favor of the motion let it be known by saying aye; contrary, no.

The motion is carried."

Mr. Drinker: And on page 971 of the same exhibit.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Drinker (reading):

"Delegate McSpadden: The committee that was appointed yesterday evening, we your committee to whom was referred the cases of Fred W. Holt, John Mamik, Oscar Layton, John Champion, James Slankard, Bill Reed, Dave Branch, James McNamara, Sandy Robertson and Clint Burris, who have served or are now serving terms in jail, we recommend, owing to the financial condition of the District, that the claims of compensation be denied. D. G. McSpadden,
3601 James Aubrey concurring; Nat Rossetto non-concurring.

Chairman Thurston: You have heard the report of your committee.

Delegate King: I move to accept the report as read.

The motion was duly seconded.

Chairman Thurston: You have heard the motion. Is there any discussion?

Delegate Leonard: I move you that we accept the report as read, the majority report.

Chairman Thurston: It has been regularly moved and seconded we accept the majority report, and that is to concur in the report."

Mr. Drinker: Now, skipping over to page 973.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants and each of them, at the time duly excepted and still except.

Mr. Drinker: (reading):

"Delegate Degnan: Mr. Chairman and brothers: It looks very queer to me we are going to deny the claim of the brothers that laid in jail for six months. It was threshed out that they were entitled to it. We are complaining about Prairie Creek being exposed here at one time by the speech of our able lawyer, and you put in the records yesterday, putting a man on the pay roll, and you went on record as giving him pay until he gets a job, and he doesn't get it from the company, and here we have five or six brothers that laid in jail and get nothing at all. I think it is a shame that they don't give those brothers what they are entitled to.
3602 If you want to know the whole truth and go that far into it, you can get it, all right. Maybe you don't want to hear it.

Chairman Thurston: We don't want it.

Delegate Degnan: I want this [conventtion] to pay the brothers' wages while they were in jail, they are entitled to it. They went to jail and suffered six months, I understand, and now they want the little wages that they are entitled to, and we are not treating them fair. I am in favor of those brothers getting what they ask for, their wages, while in jail."

Mr. Drinker: From Plaintiffs Exhibit No. 53, proceedings of the Fourteenth Convention of the United Mine Workers of District 21, held at Fort Smith, April 18th, 1916, on

page 26, the report of the Credential Committee showing Local Union 742 Williams Oklahoma, James Doyle one vote; at Local 1565, Midland, Oklahoma, John Manick one vote; and Local 1526 Hartford, Oklahoma, James K. McNamara two votes.

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull: If the Court please, before entering upon another phase of our proof, I want to ask if all of the minute books have been produced that are to be produced.

Mr. Covington: All that we could get hold of. I take it that these are all of the minute books that we have been able to get hold of in this particular territory, but we have not covered Oklahoma and Texas, and we could not do it.

3603 Mr. Hull: They are all here that we wish, except Local 2110 Camp Beulah, and Local Union 340 Midland.

Mr. Covington: 2110, Camp Beulah is over there.

Mr. Hull: It has been brought in since,—I have not seen it. That is the financial secretary's ledger, but we want the minute book from that local.

Mr. Covington: That is all I know anything about.

Mr. Hull: We don't want to cover Oklahoma or Texas, but there are two that we would like to have produced, or have an affidavit in connection with them.

Mr. Covington: If they are in existence they cannot be found; they change about, and the secretaries move away, and we have done the best we can, and I will see if there is any chance at all to get hold of them.

The Court: Make the proper effort to get them, and if you cannot make the proper showing.

Mr. Hull: Then, we will postpone that proof. The other day, I identified some of these participants as members of the different locals, and I now offer from Plaintiffs Exhibit No. 176, so much of page 20 thereof,—

The Court: The same being what?

Mr. Hull: Treasurer's Cash Book of Local 1565, so much of page 20 thereof as shows J. B. Rankin to have received on December 24, 1913, a check for $3.30; and so much of page 32 thereof that shows on April 16, 1914, Clint Burris received for pit committee and telegram $5.98; and that on the same day John Manick received for pit committee $5.00; and that on April 16th, 1914, J. W. Howard received card book and March salary and stamps $12.00; on the same page on April 16th, Clint Burris received $50.00 for the death of Wil
3604 liam Morgan, death fund, and that on the same day F. Caulfield received $2.40.

On page 34 thereof, so much as shows that on June 9th, 1914, John Manick was paid for the lights for the hall $5.45, and that Clint Burris, on the same day, received $5.00 for the same purpose.

So much of page 36, as shows the signature of Frank Raccondo, apparently on a committee. I am afraid to interpret this. Here is the signature of Frank Raccondo, H. Cappo and John Manick, affixed to an audit on this page.

And on page 36q so much that shows that Frank Gippilo received for expenses to Fort Smith $2.00, and so much of page 54 that shows that on June 22nd, 1916, Frank Gippilo received $4.40, and so much on the same page that shows on May 9th, 1916, Pink Dunn received a balance on compensation of $2.00.

So much of page 62 that shows on April 2nd, 1916, Frank Gippilo received $1.65; and so much of page 76 that shows that on September 12, 1917, John Manick received for committee work $4.00, and Sandy Robinson received $2.00 for committee work.

And so much of page,—

Mr. Warrum: The defendants separately object to the offer in evidence of these extracts showing payments after the institution of this suit.

Mr. Hull: They are not dues paid, but this is disbursements.

Mr. Warrum: Or disbursements.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each
3605 of them, at the time duly excepted and still except.

Mr. Hull: That on October 18, 1917, Clint Burris received $5.00 to attend a Huntington meeting.

We offer so much of Plaintiffs Exhibit 195, the financial secretary's cash book for Local 1565 as shows,—

The Court: Let me see that last offer, that page. What page was that?

The Reporter: Page 74.

The Court: This was all December 1916? What is the purpose of offering that?

Mr. Hull: To show that Clint Burris and John Manick, after they came out of jail, were put on committees in this local.

The Court: I think the objection will be sustained. Let the record show that the Court, upon the examination of the exhibit, sustains the objection, and the jury are instructed that in regard to the last offers, in 1916 and 1917, the Court holds that is irrelevant, incompetent and immaterial, either of which objections are good, and you are instructed to pay no attention to it.

Mr. Hull: That refers only to 1916 and 1917?

The Court: Yes, sir.

Mr. Hull: Will the same ruling apply to 1915?

The Court: Yes, sir, just the simple fact that they are on the pay roll, or that they were put on committees, or paid services after the occurrence, is entirely immaterial.

Mr. Hull: Is your Honor familiar with the decisions which require labor organizations to discipline by expulsion members that have acted contrary to the principles of
3606 the organization?

The Court: I don't agree with you that that is the law; I will hear you at the proper time, but at this time I don't undertsand that to be the law.

Mr. Hull: Mr. Drinker has authorities on that proposition.

The Court: I will hear you at the proper time.

Mr. Hull: We offer from Plaintiffs Exhibit 195, entries in the book which is the financial secretary's cash book for Local 1565, such entries as show the connection of Clint Burris with that local in 1915, on July 31, expense to convention $10.00.

We offer from Plaintiffs Exhibit 196, being financial secretary's ledger of Local 1526, so much of page 40, that shows that Ernest Nein was admitted by card in 1900 to Local 1526, and that he paid dues in November and December 1913, and for the first seven months of 1914.

We offer so much of Plaintiffs Exhibit 175, as shows on page 274, that J. B. Rankin,—this is 1916, so I will just make the offer. So much of page 274 that shows that J. B. Rankin was a member of Local 1565 during the entire years of 1916 and 1917.

Mr. Warrum: We renew our objection.

The Court: Objection sustained. There is no evidence of defendants discipline or ratification of anything that was done in the preceding years, and whether he remained a member of the union, or whether he held positions under it, would be immaterial.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

3607 Mr. Hull: We offer so much of Plaintiffs Exhibit 197, —now I want to say that this is probably open to the same objection, but I would like to call it to your Honor's attention especially. So much of Exhibit 197, being the ledger of the financial secretary of Local 2110, which is Camp Beulah local, which shows that James Crossley was appointed financial secretary, December 4, Saturday, 1915, and that he kept this minute book, as financial secretary, beginning two months after he came out of jail, having been imprisoned for writing that letter to Judge Youmans.

Mr. Warrum: The defendants renew their objections.

The Court: Objection sustained. The Court is of the opinion that no proof of discipline or want of discipline, or no proof of ratification is admissable.

Mr. Hull: We offer so much of plaintiffs Exhibit 180, as shows on page 97, that Tom McDonald was a member of Local 1912, admitted July 1914; that he paid dues during the remainder of that year.

And so much of Plaintiffs Exhibit 174, as shows on page 187, that J. B. Rankin was a member of local 1565, from October 1913 to July 1914.

We offer so much of Plaintiffs Exhibit 198, which is marked "Journal of Local 1130", so much of page 45, as shows that W. H. Cluck was admitted by card August 12, 1910, and

paid dues in August and September of that year, and so much of the same exhibit that shows on page 83, that W. H. Cluck was a member in 1912, paid dues in May and June of that year, and was exonerated by card May 9th; and so much of page 183 as shows that W. H. Cluck paid dues in 1912, in July, August, September, October and November.

3608 We offer from Plaintiffs Exhibit 199, being the minute book of Local 1526, so much of page 222 thereof as shows an erasure of eight lines from the minutes of April 1917.

Mr. Warrum: If it was the only erasure we would not object to it, but there are erasures all the way through this.

The Court: What is your objection to it?

Mr. Warrum: We object to it because no inference can be drawn from it.

Mr. Hull: Counsel has stated that there are erasures all the way through this, and I have looked in vain for any others.

The Court: How does a blank page prove anything?

Mr. Hull: How can we prove anything if pages are torn out and erased, the pages made on the dates that we want, with reference to this trouble.

The Court: Proceed.

Mr. Hull: Your Honor realizes that this is April 17th?

The Court: I realize that it is necessary to get some evidence in, and not all inferences.

Mr. Hull: There is other evidence in this book. On page 226 of this same book, we offer so much of the minutes of May 15, 1914, as show that a motion was made "That we instruct the delegates to vote favorably on the Huntington electric light, in regard to No. 4 Prairie Creek."

We offer so much from page 236 of the same exhibit as shows that J. McNamara collected $21.65 for No. 4 strikers, with vote of thanks for J. McNamara.

We offer so much of page 237 as shows that J. McNamara was elected by acclamation to be delegate to Farmers
3609 Convention at Greenwood on the 21st of July to show his position in the union.

We offer so much of page 263 of the same exhibit,— now, if the Court please, the purpose of this offer is to show that on January 5, 1915, James McNamara was put back as check-weighman, by vote of the local, after he came out of the penitentiary.

Mr. Warrum: The defendants separately renew their objection.

The Court: Immediately after he came back,—what is the date?

Mr. Hull: January 5, 1915. No, this is all preceding, and to show his connection with the union, I was mistaken.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull: "Moved and seconded that James McNamara go on the tipple as check-weighman."

And so much of page 264 of the same exhibit that shows that J. McNamara was elected financial secretary by acclamation on January 8, 1915.

Mr. Warrum: Defendants renew their objection, and because there apparently is two McNamara's.

The Court: Was this before the trial?

Mr. Hull: January 8, 1915, and a plea of guilty was received on the 20th.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

3610 Mr. Hull: So much of page 266, of the same exhibit, as shows that on January 22, 1915, it was moved and seconded that the President appoint a committee to take up a collection at the office for the benefit of the boys in Fort Smith.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull: So much of the same page [ashshows] that it was moved and seconded that we send a circular letter to the

district office, asking them to send it through the district, asking for aid for the brothers and their families who are in need.

Mr. Warrum: The defendants renew their objection.

The Court: Well, that is rather a broad statement, brothers and their families, unless there is something there to connect it.

Mr. Hull: It is next to the statement about the brothers in Fort Smith, the next sentence after.

The Court: I think I will leave it to the jury to determine what it means.

To which ruling of the Court, the defendants, and each of them, at the time duly excepting and still except.

Mr. Hull: So much of page 267, as shows that a committee was appointed to confer with other committees from the other locals, to see about getting a petition to get the boys out of jail, and to see about taking care of their families. Carried on January 29, 1915.

So much of page 270 of the same exhibit, as shows that the report of the committee accepted, and J. W. Smith reported that he got $44.90 for the boys in jail.

3611 So much of page 271 of the same exhibit that shows that it was moved and seconded that the assessment to aid families of the boys in jail be reduced to 25 cents. Carried.

So much of page 275 of the same exhibit as shows that it was moved and seconded that we send the Journal and Union Sentinel to Brother James McNamara, Fort Leavenworth, Kansas. Carried.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull: And we offer so much of page 276 of the same exhibit that shows, regularly moved and seconded, the appointment of Brother John Pattie and Will Smith, on a special committee for collecting for the boys in jail. Carried.

And on page 277, that James McNarama and Bill Collinski, appointed to take collection for the boys in jail. Carried.

And on page 288, so much thereof that shows that on,—and I call your Honor's attention to the fact that this was on June 25, 1915, the purpose being to show from page 288, that Oscar Layton was appointed alternate check-weighman, and that it was about three or four days after he came out of jail.

Mr. Warrum: Defendants renew their same objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull: And on page 314, so much of the same exhibit as shows,—

3612 The Court (interrupting): Just add to that, the objection is overruled, the Court pointing out to counsel that the mere fact that a person was a member of an organization, or was appointed on some committee is not sufficient, but there must be some affirmative proof.

Mr. Hull: So much of page 314, as shows on August 6, 1915, it was moved and seconded that the chair appoint a committee to take up a collection for J. McNamara. Carried.

And we offer so much of page 297, the same exhibit, that shows that it was moved and seconded on August 27, 1915, that a collection be taken up for J. McNamara and Crossley. Carried.

And so much of page 335, as shows that on March 17, 1916, Brother James McNamara was elected a delegate to attend the district convention at Fort Smith on April 18th.

Mr. Warrum: Defendants renew their objection.

The Court: The same ruling.

To which ruling of the Court the defendants, and each of them, at the time duly excepted and still except.

The Court: We will now stand adjourned until 2.00 o'clock this afternoon.

3613 Monday, November 12, 1917, 2:00 o'clock P. M.

Pursuant to adjournment as above, court reconvened at 2:00 o'clock P. M. Monday November 12, 1917, the parties appearing as before, and the following further proceedings were had.

Mr. Drinker: If the Court please, we have a witness that comes here in connection with the authenticity of the joint conference proceedings, and I would like to suspend the reading of these proceedings and put him on the stand.

G. W. Traer, called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. Your name is B. W. Traer? A. Yes, sir.

Q. Where do you live? A. Chicago.

Q. What is your business?

A. I am engaged at present in developing a coke process in Illinois coal, and I am also treasurer of an operating coal company in Illinois, not in the active operating business.

Q. During the period from 1898 to 1912, and subsequent, what was your business?

A. From 1898 to 1912 I was actively engaged in the operating and managing of coal mines in Illinois and Iowa.

Q. What companies were you with?

A. I was with several different companies. The early part of that time, in 1907, with a company called the White Breast Fuel Company, owning mines in Illinois and

3614 Iowa; and with the Cardiff Coal Company of Illinois, and later I was receiver of the Illinois Colleries Company in Illinois, and had charge of a small organization of my own a year or two called the Treaer Coal Company of Illinois.

Q. Now, during that period, from 1898 to 1912, did you participate in any of the joint conferences of miners and operators in the central competitive field, and if so, what ones?

A. Beginning with the first joint interstate conference in 1898, I participated in all of them until and including 1906, except the one in 1904.

Q. And did you hold any office in those conventions, or any of them?

A. I was chairman of the Interstate Joint Convention in 1902 and 1903 and 1906.

Q. Now, Mr. Traer, I hand you six books, marked Plaintiffs Exhibits 30 A, B, C, D, E and F, and ask you in order, to state what they are.

A. Outside of the record, do you want me to mention each one of them?

Q. You can go through them all, and then mention them one after the other.

A. These books are the official printed proceedings of the joint conferences of the United Mine Workers and the Coal Operators of the central competitive fields, as it was called, comprising Western Pennsylvania, Ohio, Indiana and Illinois. These joint conventions, being meetings at which the joint contracts between the miners and operators were adopted, and these books, as far as I have been able to look into them, contain the debates in the convention, and scale of the convention, leading up to the adoption of the contract.

3615 Q. Now you state that they were the official printed copies, what do you mean by the use of the word "official"?

A. They were compiled by the secretaries of the joint convention. In these conventions there was a secretary who was named by the miners, and an assistant secretary named by the operators, and they were both elected as officers of the convention; there was a reporter, shorthand reporter, who kept a stenographic report of proceedings, debates and transcribed it, and that report was audited by those secretaries and then published, or caused to be published.

Q. By whom?

A. By them, or by authority of their organization, and was distributed, at least to the members of the operators organization, for subsequent use in later conventions, or in interpretation of contracts between conventions.

Q. What was distributed?

A. These printed reports, in this form.

Q. Now in connection,—you stated that these printed reports were used in later proceedings. For what purpose were they used in later proceedings, and how?

A. They were used for reference and discussion of what had taken place in previous meetings. They were used by common consent generally, custom and usage. They were the basis of reference for the record of previous meetings, when any questions arose.

Q. Did that practice apply to any particular convention, or to all the ones to which you attended?

A. No, these books were used continually, as long as I attended conventions; they were in general use at the conventions and between conventions.

Q. And that applies to the proceedings of every convention from 1898 to 1906? A. Yes, sir.

3616 Q. I wish you would define a little more specifically, for what purpose they were used by the miners and operators in these conventions, and what occasion arose for their use in that way.

Mr. Warrum: The defendants separately object, because it is utterly immaterial, and throws no light on the issues in this case, and does not prove the authenticity of the copies offered, and it is not the best evidence, in the absence of the originals.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. Whenever any question arose as to what had been done or said in previous conventions, or as to the interpretation of any part of the contract, these printed records were the source of information which was referred to.

Q. By the miners and operators indiscriminately?

A. Yes, sir. Any question which might relate to previous meetings, or to the meaning of any part of the contract, if it were not entirely clear as to the intention of the parties.

Q. In the conventions which you say you have attended, was the type written transcript by the stenographer of his proceedings ever so used?

A. Not to my knowledge, I never saw one. These books were habitually used.

Q. Now, Mr. Traer, independent of these proceedings, as reported in these books, I wish you would state from your own recollection, what, in the course of these debates and proceedings, was the position taken respectively by the operators and the miners relative to the obligation of the miners,

3617 under the Chicago Agreement of 1898, in connection with the protection of the union miners from competition of non-union mines.

Mr. Warrum: The defendants separately object to the question and the evidence sought to be adduced thereby, for the reason that it calls for the interpretation by this witness of a long series of debates, and the construction that he put upon the remarks and discussion.

Mr. Drinker: If the Court please, the purpose of this testimony is to show the understanding and arrangement, and the beginning of the conspiracy, the basis of this suit. Here is a man that was,—

The Court: (interrupting): The only question is, that is of course competent, but the objection is that it is simply calling for his conclusion as to their attitude, without calling for what was said and done.

Mr. Drinker: Strike out that question, please.

Q. Mr. Traer, independent of the text of the debates in these conference proceedings, state what in your own personal recollection was the substance of the discussions and debates between the operators and the miners, what the respective positions taken by each relative to the obligations of the miners under the Chicago Agreement of 1898, in connection with the protection of the union operators in the central competitive field, from the competition of non-union coal in its competitive fields was

Mr. Warrum: The defendants separately object to the evidence sought to be adduced by this question, for the reason that plaintiffs counsel has introduced numerous extracts from the proceedings, which have been read before the jury, and it is for them to make their own interpretation and conclusion therefrom, and it is asking the witness to express his own opinion, in place of the opinion of the jury, and
3618 put an interpretation and construction upon the debates.

The Court: Overruled. The Court is of the opinion that this question calls for the recollection of the witness of the substance of what was said upon this particular subject named in the question, and that part the Court thinks is competent.

Mr. Warrum: And for the reason, that the books have been introduced in evidence, and they contain, according to the testimony of witnesses introduced by the plaintiffs themselves, a correct transcript of all that was said, and it is therefore improper to ask the witness orally to give the substance of them.

The Court: The Court don't understand that is all that was said.

Mr. Drinker: If council will withdraw their objection to the books. I would be inclined to stop and rest on the books.

The Court: Proceed, objection overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. Beginning at the convention in Pittsburgh, in 1899, which was the one next following the adoption of the original contract,—

The Court: (interrupting): At Chicago?

A. At Chicago, your Honor,—the coal operators, many of them throughout the meetings, called upon the miners,—I will change that form of expression a little bit. They claimed that the miners had not, or stated that the miners had not complied with the Chicago Agreement in bringing about the conditions in the non-union field, the mining conditions and scale of wages to these in the union
3619 fields.

Q. What union fields?

A. The central competitive field, covered by this agreement.

A. And what non-union fields did they have reference to particularly?

A. Most particularly, and almost entirely, in those early years to West Virginia. The miners admitted in these debates that they had not done so, but claimed that it was from inability and from not indisposition or lack of effort on their part. They claimed that they had endeavored to do so, but had been unable to for various reasons, which they gave. These discussions of that nature, continued throughout, I think, every convention down to 1906.

Q. And substantially the same position being taken by each side? A. Yes, sir.

Q. Was anything said by the miners in connection with those debates as to their future efforts in that connection?

Mr. Warrum: The defendants again object, because it calls for a conclusion, leading and suggestive, and because the debates themselves would be the best evidence.

The Court: It is leading, but the Court in its discretion will permit the witness to answer. The objection will be overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. To the best of my recollection, down to and including the last of these interstate conventions, which I attended, that is in 1906, the position of the parties was the same. The operators still insisted upon the obligation and duties of the miners to [caarry] out their original agreement, the
3620 miners admitting it, but claiming their inability to do so

Q. You have not answered the question sir. Read it, if you please.

(Question read by official reporter.)

A. I have no specific recollection of any promises of future efforts, more than there had been right along in all of those meetings. It was always admitted on their part that it was part of their obligation to do it, and they asserted at all times they they were going to do it when they could, when they could bring it about.

Q. Now, in connection with these debates, what, in substance, was said by the operators from time to time relative to the effect upon their business and upon the future relations between their organization and the miners organization of the competition by non-union fields?

Mr. Warrum: The defendants separately object to the evidence sought to be adduced by this question, because it is leading and suggestive, and because the evidence sought would be a conclusion on the part of the witness, and he is not asked to state any particular conversation, but is to give his conclusion of a series of conversations.

The Court: Objection overruled, the witness may state the substance of what was said but not his conclusion.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

A. It was asserted in substance by the coal operators at Pittsburgh, and subsequent conventions, that they could not continue to maintain their union conditions and pay the union scale of wages if these several competitive fields continued to operate under non-union conditions, and non-union wages, which enabled them to produce coal very much
3621 than it could be done under union conditions; that unless that relative condition could be corrected, they would not be able permanently to continue in the interstate joint movement.

Mr. Drinker: You may cross-examine.

Cross-Examination

By Mr. Warrum:

Q. These conventions were called together in what way, Mr. Traer?

A. The ornginal convention was called by an informal joint conference of representatives of the United Mine Workers and operators, from the respective states, and at the Chicago Convention, when the work of adopting the contract had been completed, and the convention adjourned, it adjourned to meet again for the purpose of endeavoring, or

negotiating another contract at a fixed time. For instance, at first meeting, [at] adjourned at Pittsburgh, to a stated date, and then adjourned at Indianapolis to a stated date.

Q. And from year to year they met pursuant to these adjournments? A. Yes, sir, until 1906.

Q. Every convention was opened usually by the submission of the miners demands, quoted from their annual convention, were they not? A. Yes, sir, I think so.

Q. And in the early years, during the time that you took part in these conferences, they were joint conventions of operators and miners? A. Yes, sir.

Q. The miners annual convention held over until the joint conference had terminated, is that correct?

A. That is according to my recollection.

Q. After the miners proposition was submitted to the
3622 operators, a debate would follow all of the questions in the miners demands, whether those questions were mine-run coal, check-off, or conditions of mining, or the wage scale, or whatever it might be, is that correct?

A. In a general way that is correct, although the major debate did not, as a rule, immediately follow the submission of the miners proposition.

Q. What did usually follow the submission of the miners proposition?

A. There would be possibly some discussion of it, and I think, as a rule, the operators would submit counter propositions.

Q. Yes.

A. And then, after possibly a little more discussion, the entire matter would be submitted to a joint scale committee, which was a representative joint body from the two constituent parts of the main convention.

Q. And they would report their deliberations and agreement, if they come to an agreement, to the joint conference.

A. Yes, sir.

Q. And then the miners had so many representatives there, that is, the number of conventions during the years that you participated in, and the operators had so many persons present, is that right? A. Yes, sir.

Q. And each state was allowed an equal number of votes, no matter how many miners or how many operators, the miners would have four votes and the operators four votes, from each state? A. Yes, sir.

Q. And in Indianapolis the block coal field operators had two votes, and the bituminous had two votes, and the miners the same, is that correct?

A. Yes, sir, I think that is correct, according to my
3623 recollection.

Q. And these debates would cove a great many days?

A. From one to two or three weeks.

Q. And sometimes they would be adjourned, and meet together at some other city, or at the same place, is that right?

A. I think not adjourned to any other city, although once, if not twice, they adjourned to meet again at Indianapolis.

Q. Now, you are familiar with these conferences, and the contracts that grew out of them? A. Yes, sir.

Q. You know that the United Mine Workers in their annual convention reserved the right to ratify any contract that was agreed upon by their representatives and the operators in these joint conferences, and that they were as a matter of fact referred back to the annual convention for ratification?

A. To the best of my recollection they did that at this meeting, before it was finally adopted by the joint conference.

Q. It was referred back to and ratified by the annual convention of the miners, and assembled from the different states?

A. Yes, sir, it is my recollection that they called their international convention ratified the tentative agreement before it was finally adopted by the interstate joint conference.

Q. And it would be adopted in the form in which they ratified it, if it was adopted at all? A. I think so.

3624 Q. Now, at each one of these conferences, joint conferences, the miners would present a demand, usually for an increase of wages, would they not? A. Yes, sir.

Q. And also relating to other conditions surrounding mining work, is that correct? A. Yes, sir.

Q. And the operators would oppose the increase of the mining scale, of the scale of wages, is that correct?

A. Usually, not always.

Q. Did you ever know them to agree to it?

A. I think in one or two years, when the conditions were especially strong, they objected to the amount, but did not expect to get away without an advance.

Q. And these debates were very largely over the question of advance of wages?

A. A large part of them related to that.

Q. And the operators, or representative debators or speakers for the operators objected to any advance, and all kinds of arguments were offered that could possibly be made to offset any argument on the part of the miners for an advance in wages, is that correct? A. Yes.

Q. And it would cover a wide range of subjects? A. Yes.

Q. And among other subjects talked about, the operators stated they could not continue to produce coal if they had to

produce it in competition with the coal mines of West Virginia, at a nine or ten hour day, and at a lower rate of wage, and other non-union conditions, is that right?

A. Well, they claimed they could not continue to produce it profitably, or that it could exist as a profitable business.

Q. But whenever they signed their contracts they con-
3625 tinued on producing coal, did they not?

A. Yes.

Q. And they were continually complaining because West Virginia was not an organized state, and the mine workers had not been organized in that state, is that correct? A. Yes.

Q. Did they ever, at any of these conferences which you ever participated in, enter into any conspiracy or agreement or collusion with the miners, and that the miners were to go, as a part of that conspiracy, agreement or collusion, to West Virginia, or any other non-union field, and by the use of force or violence, or other illegal means, interfere with them, and stop the production of non-union coal?

A. I never understood it so.

Q. Were you ever at any of these conferences when any conspiracy or collusion or agreement with the miners or any representatives of the miners was entered into, or did you enter into any contract for that purpose?

Mr. Drinker: We object to that as calling for a conclusion.

Mr. Warrum: This is cross-examination.

The Court: Objection overruled.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

A. No, sir, I never entered into any contract, the carrying out of which, as I understood it, would require any unlawful conduct on the part of anybody.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. Mr. Traer, I meant to ask you, in connection with
3626 your answer, that the principal non-union competitive field referred to in the 1899 conference was West Virginia,—what other non-union fields came into the discussion at a later date?

Mr. Warrum: If the court please, the defendants separately object unless it is confined to the period in which he participated in these conferences.

The Court: Certainly.

Mr. Drinker: I so intended the question.

A. Western Kentucky and what we called the Southwest, comprising Kansas, Oklahoma and Arkansas,—became subjects of discussion as to competitive conditions.

Q. In the same connection that West Virginia had been, as you have described?

A. Yes, with relation to the different parts of the central competitive field, but upon the same general [principals].

Mr. Drinker: That is all.

Recross Examination

By Mr. Warrum:

Q. Have you familiarized yourself with these debates up to 1906, since you were subpoenaed or sent for as a witness in this case? A. I have gone over them.

Q. Will you kindly refer to any debates or references made in any debate to the Southwestern field?

A. I cannot do it at this moment.

Q. Could you do it with a little time?

A. I cannot say, I am sure. I know they were referred to in the meetings and in the discussion of the scale committee, or sub-scale committee.

Q. In these conferences, where would you meet? Would you meet at some public hall?

3627 A. The general convention met in public hall.

Q. Were they open to the public, and the reports published in the newspapers?

A. Yes, I think they were. My recollection is the general convention was generally public.

Q. And these proceedings have all been published and circulated around and anyone could get the debates as they appeared in the press?

A. I never saw the debates published in the press.

Q. I [mean] printed when I used the word "press". I meant put on the press and published in book form.

A. In these books here (indicating)?

Q. Yes, they were available to the public, in a limited quantity?

A. Well, I should hardly think so. They were issued only by the organization, and while they might possibly have given out some to outsiders,—some outside of their own membership. I do not think they were ever given out generally at all.

Q. There was nothing secret about these publications?

A. No, sir.

Q. When they would meet in these halls, they were usually addressed by the mayor of the city or the governor, were they not? A. Yes, they were several times I remember.

Q. Do you remember how they organized ? Did the rules provide that the miners should get on one side and the operators on the other? A. They did so.

Q. They did that, did they? A. Yes.

Q. And when they would debate, some of the debates were pretty hot, weren't they? A. They were very vigorous.

Q. And high tempered? A. Yes, at times.

Q. And occasionally they would adjourn without
3628 making any agreement at all?

A. Not until 1906 did the general convention adjourn without any adjournment.

Q. And the next year they met without Illinois participating in the conference at all?

A. I think there were no general conventions after 1906. Thereafter what was called the Interstate Joint Movement, which was by a representative committee from the respective sides from each state. And Illinois did not attend in 1908 and 1910.

Q. Now, these deliberations and the consensus of judgment, and the agreement, were all put in the form of a joint scale agreement? A. Yes.

Q. That was the conclusion or termination of the conference, the joint scale agreement?

A. Yes, but it differed in its acceptance, and in its force, from the ordinary contract at law, because the record, as it was called, technically, between the parties was always considered as a part of the contract, and it was often brought out to be discussed in its interpretation.

Q. The contract, as a matter of fact, was signed by the representatives of the operators and the representatives of the miners, was it not? A. Yes.

Q. And that contract was referred back to the miners for ratification?

A. Yes, sir, just as you have stated before.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Drinker:

Q. Mr. Traer, I hand you a volume which has been marked plaintiffs' Exhibit No. 200, purporting to contain the proceedings of the Joint Interstate Conventions from 1898 to
3629 1902, and ask you to look at pages 37, 38 and 39 of the proceedings for 1900 and see whether that refreshes

your memory as to the discussion relating to the competition of Iowa, Tennessee and Indian Territory in these connections, particularly the remarks at the bottom of page 37 by Mr. Reece and Mr. Chapman on pages 38 and 39 (handing witness volume referred to)?

A. Well, this refreshes my memory to the extent that I recall that in this debate, the Western situation was discussed.

Q. Do you remember anything particular in connection with Mr. Reece's participation in those Joint Conferences?

A. Mr. Reece at that time was an official, I believe President of the United Mine Workers of Iowa, and the Iowa officials,—the Iowa miners and operators were then seeking to be taken into the central competitive field, to have their contract made as a common contract, and at the same time with the others, that they be included in the same contract with the others.

Q. In that book that I have handed you, plaintiffs' Exhibit No. 200, the same volume which you have described?

A. Yes, sir.

Q. Now, I will ask you to look at plaintiffs' Exhibit 30c, being Joint Convention Proceedings for 1906, and state whether you presided at that convention?

A. I know that I did without looking at the proceedings.

Q. Will you please look at the statements of Mr. Mitchell on pages 6 and 7 and of Mr. W. B. Wilson on page 9, and first state who they were. Mr. Mitchell and Mr. Wilson?

A. Mr. Mitchell was Mr. John Mitchell, the President of the United Mine Workers of America.

Q. Who was Mr. W. B. Wilson?

A. Mr. W. B. Wilson was Secretary of the United Mine Workers of America.

3630 Q. Now will you read from those two statements and see if that refreshes your memory as to anything in connection with the Southwest?

A. That shows plainly, and I now recall, that there was a debate in 1906 in which Mr. Mitchell demanded that the miners and operators of the Southwest be brought into joint convention, and Mr. Wilson appears to have backed him up.

Mr. Drinker: That is all.

Mr. Warrum: Nothing more.

Witness excused.

Mr. Hull: If the court please, we now offer from plaintiffs' Exhibit 201, which is the minute book of Local 1814 of

Deming, Arkansas, so much of page 300 thereof as states, "Moved we advertise Brad Hobson and Earl Nixon as scabs, as they are working at Bache-Denmans". That was in the minutes of June 24th, 1914.

And we offer so much of plaintiffs' Exhibit 202, being the minutes of Local Union 1842 of Greenwood, Arkansas, as states, on page 96, being the minutes of February 17th, 1915, as follows, "Moved and seconded that there is a committee appointed to go before the District Board with a resolution and try to get the brothers out of the jail. And the endorsement of the District Board to get the General Assembly and the Governor to send to the President and get him to pardon the brothers that are in jail. Motion carried."

We offer so much of plaintiffs' Exhibit 203, being the minutes of Local 1912 of Hartford, Arkansas, so much of page 58 thereof as shows that N. Geiss was acting Secre-
3631 tary, and that Nick Geiss was acting Secretary, on page 59.

And from the same exhibit we offer so much of page 83 as states, "Regularly moved and seconded that we donate the brothers ten dollars to go to trial in Ft. Smith." Then there is a word I cannot read. It looks like "six", "On motion we donate the brothers ten dollars to go to court, with the understanding we ask the District to reimburse the amount of ten dollars to our local."

We offer so much of plaintiffs' Exhibit No. 204, being the minutes of Local Union 2769, as shows on page 143 that a motion was passed the house to have the president appoint an auditing committee, and accordingly C. Toby and David Branch was appointed. That is at the meeting of July 6th, 1914.

And from the same exhibit the fact that pages 145 and 146 are torn out of the book, the preceding page being the minutes of July 6th, 1914, and the next page being the minutes of July 20th, 1914.

The Court: In what local is this?

Mr. Hull: This is Local 2769 at Hartford. I am not familiar with the numbers of these locals, where they are located by number.

Mr. Warrum: What is the number?

Mr. Hull: 2769.

Mr. Drinker: At Hartford. It was represented by P. R. Stewart at the 1915 convention I offered in evidence this morning.

Mr. Hull: I offer from the same exhibit, on page 160, so much thereof as states: "It was regularly moved and seconded to donate what money we now have in the treas-
3632 ury to aid the above mentioned brothers." I will have to read the motion before that: "Motion carried, and it was regularly moved and seconded to have the local secretary write Secretary Douglas to have the District aid the brothers' families in jail", and then "It was regularly moved and seconded to donate what money we now have in the treasury to aid the above mentioned brothers' families as such time as the Board takes some action on the matter. Motion carried." That being from the meeting of February 1st, 1915.

We offer so much of plaintiffs' Exhibit No. 205 as shown on page 32 thereof, being the minutes of the meeting of February 24th, 1915, at Huntington, Arkansas, so much as shows that it was moved and seconded that the recording secretary,—

Mr. Warrum: The defendants separately renew their objection for the reason that this was long after the institution of the suit.

The Court: What was the time?

Mr. Hull: February 24th, 1915, in regard to the men being in jail.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "Moved and seconded that the recording secretary post notice and notify all of the members that the question of assessing ourselves to assist our brothers in jail at Ft. Smith." "Moved and seconded we appoint a brother to assist the financial secretary in collecting the dues".

3633 And from page 35 showing it was "Moved and seconded we assess ourselves 50 cents per brother for those brothers in jail at Fort Smith. Carried."

We offer so much of plaintiffs' Exhibit 206, being the minutes of Local 2494 at Arcole as shows that the pages 111 and

112 are missing, torn out. The meeting before was April 3, 1914, and the next meeting was April 23rd, 1914.

The Court: What local was this?

Mr. Hull: That was the local at Arcole.

Mr. Covington: That is down in that vicinity.

Mr. Hull: We offer so much of plaintiffs' Exhibit 207 as shows on page 75 thereof that Clint Burris was elected check committeeman on March 10th, 1914. And so much of the same exhibit on page 82 as shows that the motion prevailed that Ayon Sylesberry and Sam Brown "Be expelled from the organization and published in the Journal", being minutes of meeting of April 7, 1914.

If the court please, we now offer in evidence records produced from the Marshal's office in regard to the dismissal and release of James Crossly from jail. The deputy marshal produced it for me. If counsel want me to make techincal proof, I will be glad to do so. The record may show that James Crossley was released from the Sebastian County jail September 27th, 1915.

The Court: In the absence of objection it will be received.

Mr. Drinker: If the court please, we offer from the minutes of the International Executive Board, being exhibit No. 49, identified by the witness John P. White, and produced by the International Union, the following under date
3634 of July 21, 1914, beginning, "Meeting called to order at 10::00 a. m. by President White", etc. In order to show that James Mullen was present at that meeting.

And from the meeting of the International Exeeutive Board, Exhibit No. 50, produced by the defendant United Mine Workers of America and identified by the witness John P. White, that part on page 4, for the same purpose, to show that James Mullen was present.

And from the minutes of the meeting held at Philadelphia Member 16 to 21st, being Exhibit No. 51, produced and identified in connection with the previous two exhibits, this is for the year 1914, the roll call, which was called by Secretary Green and the following persons answered to their names.

Mr. Warrum: The defendants separately object to this, it being long after the institution of the suit and throwing no light on the issues in this case.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Hull (reading): "District 21, James Mullen."

Mr. Drinker: If the court please, we offer from plaintiffs' Exhibit 191, being the fifth semi-annual report of Fred W. Holt, Secretary-Treasurer of District 21, United Mine Workers of America, from the Auditor's Report including from April 19, 1914, to September 30th, 1914, inclusive, produced by defendants in answer to the order of court, on pages 1 and 2, the list of receipts from the several locals, to show that locals 340, 1565 and 2110 paid nothing to the District organization during that period. These were
3635 three of the locals at our mines, and defendants in this case. And also that Local 560 paid nothing.

The Court: Which is 560?

Mr. Drinker: Hackett. From page 5, disbursement defense fund, showing the amount disbursed by Local Unions 340, 2110, 1565 and 2494.

The Court: This is the report of District 21?

Mr. Drinker: Yes, your Honor. From page 6 of the same report the following items:

"Expense of Prairie Creek Strike.

Webb Covington, attorney fee,	$3137.63
Ben Cravens, attorney fee,	1120.75
Bob McFarlane, attorney fee,	995.25

Court Cost in Injunction Case.

Expense of Witnesses, etc.,	6696.01
Merchandise, tents and supplies for strikers and and their families,	7637.78
P. C. Hendricks, stenographer, transcribing evidence in injunction cases,	220.45
William Wellshear, transcribing evidence in injunction cases,	50.00
Thomas M. King, District Organizer, salary,	612.30
Railroad and other expenses,	678.62
National Organizer,	810.26
K. C. Adams, publicity agent,	454.63
K. C. Adams, special account,	25.24"

This all being under black face heading, "Court Costs in Injunction Case."

From page 21 of the same report, and pages 22, 23 and 24, to the middle of the page, the expense accounts of P. R. Stewart, showing disbursements to him for railroad and
3636 other expenses from the last half of April through the last half of September, or I mean from,—I will make the offer first from the last half of April through the last half of August, and then make a separate offer from the same volume, Mr. P. R. Stewart's expenses for the first and last half of September, 1914.

From the same report, page 35, being the expense account of William Dalrymple, Board Member, item in connection with the first half of April, April 4, Railroad fare, Ft. Smith to Kansas City, $8.53. April 5, 6, 7, 8 and as far as the 15th, inclusive, hotel bill at Kansas City.

From the plaintiffs' Exhibit No. 208, being semi-annual report of T. B. Douglas, Secretary-Treasurer, from October 1, 1914, to March 31, 1915, inclusive. This was produced by defendants in answer to order of court.

Mr. Warrum: The defendants object to this as the transactions occurred after the institution of the suit.

The Court: What is the date?

Mr. Drinker: October 31, 1914, to March 31, 1915.

The Court: What does it have to do with?

Mr. Drinker: This shows payments on account of the Prairie Creek strike.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: There is one item that description does not apply to. On page 3 we offer under this title. "Miscellaneous", a fine levied on Local Union 2834, $2.50, which is not a defendant in this case, but we offer it merely for the
3637 purpose of showing fines were levied by District 21 on local unions and no disciplinary action taken by the defendants on account of their participation in this matter.

Mr. Warrum: The defendants separately object to this for the reason that no such inference can be drawn.

The Court: The objection is sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Drinker: From page 3, items as follows, "Donations to Legal Battle in Defense of Prairie Creek Strike". I offer only the items received from local unions of the United Mine Workers of America. The list containing donations from other sources which are not offered; and I will not read them, as there is a very long, detailed list.

On pages 5 and 6, donations to Prairie Creek strike, I offer only the items of donations from local unions of the United Mine Workers of America, and not the donations from other sources which are enumerated from that list.

L. U. 2053—Spadra, Ark.	$ 5.00
L. U. 1303—Savanna, Okla.	10.00
L. U. 1565—Alix, Ark.	35.00
L. U. 984—Lyra, Tex.	25.00
L. U. 2070—Dow, Okla.	5.00
L. U. 1026—Coalgate, Okla.	50.00
L. U. 2111—Lutie, Okla.	25.00
L. U. 1164—Savanna, Okla.	35.00
L. U. 894—Lyra, Tex.	26.60
L. U. 2442—Henryetta, Okla.	81.00
L. U. 124—Trevorton, Pa.	10.00
L. U. 2856—Henryetta, Okla.	12.00
L .U. 719—Dewar, Okla.	47.85
L. U. 1856—Pittsburg, Okla.	5.00
L. U. 1514—Lost Creek, Pa.	25.00
L. U. 2201—Brayant, Okla.	78.00
L. U. 872—Van Couver, Is.	3.00
L. U. 2660—Bokoshe, Okla.	8.00

3638 From pages 8 and 9 of the same report under the head "Defense Fund", the following items, those under the general heading, "Disbursements".

Aid, L. U. 1565, Midland	$7386.00
Aid, L. U. 340, Midland	3405.50
Aid, L. U. 2110, Midland	3453.00
Aid, L. U. 2494, Midland	3043.50
Aid, L. U. 1912, Hartford	108.00
Special Aid to Hartford	543.50
Fred W. Holt	30.00

3639 Legal Services, court costs, legal expenses, and supplies for strikers in Hartford Valley 12205.73
Webb Covington, attorney 2068.46
Hartford Valley expenses, costs of filing papers for appeal in contempt case 715.00

Guy Williamson and P. C. Hendricks, transcript fee 419.15
Fred W. Holt 74.78
R. W. McFarlane 672.35
Committee Work at Hartford 1146.10
Slankard and Stroupe case..... 37.40"

From plaintiffs' Exhibit 209, being semi-annual report of T. P. Douglas from April 1, 1915, to September 30, 1915, produced by defendants in answer to order of court,—

Mr. Warrum: The defendants separately renew their objection, these being transactions which took place long after the institution of the suit.

The Court: Do these transactions relate to this matter in controversy?

Mr. Drinker: Yes. They cover meals to the men in jail and matters of that kind.

The Court: The objection is overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: From the heading entitled, "Defense Fund" on page 6:

Aid, L. U. 2494, Midland, Ark. 414.00
Aid, L. U. 340 Midland, Ark. 1078.50
Aid, L. U. 2110, Midland, Ark. 780.00
Aid, L. U. 1565, Prairie Creek.....1771.50
Aid, L. U. 1912, Hartford, to men in jail 234.00
3640 Meals for men in jail and supplies and fines 8994.80
To Fred W. Holt 39.00
Aid to James Crossley 42.00
Aid to James McNamara ..... 27.00"

Then from the bottom of page 7, amounts paid to B, Searcey, $6.75, and James Slankard, $65.00.

From plaintiffs' Exhibit No. 210, eighth semi-annul report of the United Mine Workers of America, District 21, from October 1, 1915, to March 31, 1916.

Mr. Warrum: To which the defendants separately make the same objection.

The Court: Objection overruled.

To which ruling of the court the defendants, and each of them, then and there duly excepted and still except.

Mr. Drinker: Some of these are slightly different. On page 6, payment of $7.35 to John Manick, as member of conference committee, special convention, in order to show that when he came out of jail,—

The Court (interrupting): That report covers what period?

Mr. Drinker: From October 1, 1915, to March 31st, 1916.

The Court: The court is of the opinion that it is too remote standing alone and the objection is sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Mr. Drinker: On pages 8 and 9 under heading, "Defense Fund", P. R. Stewart, services on pardon case for James McNamara, $174.70.

Klingers Cafe, meals for men in jail, Prairie Creek trouble, $18.50.

3641 On page 10 under the heading, "Pension List", "Old Age Pension", James Crossley, $78.00 and also offer the preceding report to show that he was not on the pension list at the time covered by the preceding report,—to show that he was put on the pension list since he came out of jail, and that he continued there in the succeeding one.

From the ninth semi-annual report of District 21, United Mine Workers of America, E. F. Ross, Secretary, being report from April, '16, to September 30, 1916, being plaintiffs' Exhibit No. 211 produced by defendants under the heading on page 8, "Pension List, Old Age Pension", "James Crossley, Midland, Arkansas, $105.00."

On page 21 of the same report, that is plaintiffs' Exhibit No. 211, at the end of the item entitled, "Statement of Old Age Funds returned by the United States Government in the hands of Covington and Grant, $100,000.00 (?)"

From the report of E. F. Ross, Secretary-Treasurer District 21, from October 1, 1916, to March 31, 1917, on page 10, under the title, "Pension Expenses", "James Crossley, Hartford, Arkansas, $78.00."

Mr. Warrum: The defendants separately object to the introduction of these items, being transactions that occurred two and three years after the institution of this suit.

The Court: Are they connected with this case?

Mr. Drinker: It shows they put Crossley on the pension fund right after he came out of jail and that they kept him there ever since.

The Court: Objection overruled.

To which ruling of the court the defendants, and each
3642 of them, then and there duly excepted and still except.

Mr. Drinker: These are six months at a time.

The Court: I understand that.

3643 Mr. Drinker: Now, if the court please, we wish to offer the court docket, showing the pleas of guilty in the indictment cases, and, if your Honor please, we would like to be heard in that connection.

The Court: I will hear you.

Mr. Drinker: If the court please, the Clayton Act, we think, does not apply to this case, because the Clayton Act,—what it provides is that where the United States starts a prosecution under the Anti-Trust Act,—these were not prosecutions under the Anti-Trust Act and had nothing to do with that Anti-Trust Act. They were prosecutions of these people for conspiracy to obstruct justice by interfering with the injunction, which prohibited these people from tearing up this mine. And they had nothing to do with the Anti-Trust Act, and therefore we claim that that provision of the Clayton Act has nothing to do with this case.

Furthermore, the purpose for which this evidence is offered is not against these defendants and, for that matter, we are willing to have the evidence admitted solely against the International Union and District 21 and not against the individual defendants. The purposes of it is to show what it was that President White referred to in the 1916 convention when he said that down in Arkansas our brothers and representatives have been find and imprisoned. And President White was there talking about people who had pleaded guilty, who admitted that they did these things. And he told the convention that these people had been fined and imprisoned, and gave notice to the convention all about it, and they must have known it anyhow. And then he went
3644 on and talked about their being persecuted, when he knew that these people stood up and admitted that

they did those things. And this is in connection with the ratifications and we want to show what he was talking about. And furthermore, in connection with the Journal articles, the whole thing has been referred to.

The Court: Have you the Clayton Act? I have not it before me.

Mr. Drinker: We can get it.

Mr. Warrum: If the Court please, the evidence, it strikes me, is objectionable for the very reason given by plaintiffs' counsel, as an excuse for offering it, that it refers to some other matter as a collateral matter. Either that, or it is only admissible because it is a plea of guilty growing out of this transaction, and the excuse he gives for offering it is that by some inference or other he was referring to these people when he spoke of our brothers and representatives, and it strikes me that this is not a reasonable inference at all. He was addressing the entire conference. He was speaking of [noone] in particular.

The Court: This statute provides quite plainly that a final judgment or decree hereafter rendered in any criminal prosecution, or in any suit or proceeding in equity, brought by or on behalf of the United States under the Anti-Trust Law to the effect that the defendant has violated said law, shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said law, as to all matters respecting which said judgment or decree would be an [estoppal] as between the parties thereto.

Mr. Warrum: We will insist, your Honor, when we file a motion that we desire to file with reference to the evi-
3645 dence heretofore introduced, that there is no question of ratification involved in this case at all. So far as the International organization is concerned it proceeds on a different theory, on a theory of nation wide conspiracy and that there is no relation alleged in the complaint as existing between the International Union and the District Union except for the purpose of carrying out this conspiracy, and apart from that it must stand, so far as this record is concerned, upon the character of the organization as determined by its articles of association and by the functions that have been exercised by the National organization and the District organizations and the local organizations. These three entities have been recognized by the gentlemen in their open-

ing statements, in their proof and in their complaint, and by the Court of Appeals in its construction of the complaint.

Now, if that be true, there is no question of ratification involved here because there is no question of principal and agent, or potential principal and agent, no question that this was done on behalf of the National organization and there can be no ratification of an act done by someone else unless it is done under authority from him, and then he can adopt it, and in any event the ratification must be as of the date when the liability is assumed.

The Court: There are some cases of ratification that date back to the time of the happening of the event.

Mr. Warrum: That has been, if the court please, to my mind expressly decided in the first decision in the Danbury Hatters case, which I have on the table, and the evidence there was as to the payment of dues, but the question involved
3646 was payment of dues after the suit was filed, and the question was, did it show participation in the acts when they were committed at the time they were committed.

The Court: I think I will not determine that issue now because it involves so much. I am satisfied this statute does not apply because of the criminal character, and the objection will be overruled upon the express ground that with reference to the statements referring to this particular transaction it is necessary to explain that to which he refers, the act to which he refers, the charges to which he refers, and I think, too, that the judgment, the plea, should go with it, together with all of the other testimony as to the support that has been given those who were connected with this. This prosecution was not a prosecution at all for violation of the Clayton Act, that is, very clear. There is no issue involved there that could possibly bind anybody else, because it was an issue peculiar to the obstruction of justice, which is not involved in this case at all.

Mr. Drinker: When I made the offer, I intimated that I might be willing to limit it by restricting the purpose of it, and my colleagues called my attention to the fact that there is no need of restricting it, and I would like to make the offer to prove these pleas for all purposes.

The Court: If they are admitted they are for whatever purpose they are legitimate proof of.

Mr. Warrum: Since the offer is renewed, if the court please, we desire to renew the objection on the ground that it is collateral matter and not binding on the defendants. I

will ask the reporter to write in the objection,—if your
3647 Honor—

The Court: It is proper that the objection should be renewed.

Mr. Warrum: On the ground that it is collateral matter offered for the purpose of identifying the parties referred to by President White in his report to the National Convention of 1916, the statement made by the miners' convention, 18 months after the suit was instituted and that it does not establish or end to establish any issue or issuable fact in this case; and that it is not the way to even identify those parties, if identification is needed; and the plea of guilty is a judgment in collateral matter and not binding, and the defendants separately object to the introduction of this evidence for these reasons.

Mr. Drinker: If the court please, I do not like to let Mr. Warrum's statement go unanswered.

The Court: I have my own ideas about this. You will have plenty of opportunity to answer it when the time comes.

3648 Mr. Hull: Would not the fact of the entry of the pleas be sufficient?

The Court: I would think so.

Mr. Drinker: This is set out in full, and there are about fourteen of them.

Mr. Warrum: I dont' know anything about it.

Mr. Drinker: Put them all in.

Mr. Hull: (reading.)

"Wednesday Morning 9:00 o'clock, January 20, 1915.

Court met pursuant to adjournment.

Present: The Honorable James D. Elliott, United States District Judge for the District of South Dakota, sitting by assignment.

United States
No. 1328. vs.
Clint Burris, et al.

Indictment—Conspiracy to Commit an Offense against the United States.

This day comes the United States of America by W. C. Fitts, Esq., and Roger B. Hull, Special Assistant to the Attorney

General of the United States, and come the defendants Clint Burris, Sandy Robinson, James Slankard, Peter R. Stewart, John Manick, James McNamara and Fred Holt, each in his own proper person and by Webb Covington, Esq., his attorney, and by leave of court each of said defendants now in open court withdraws his plea of not guilty heretofore entered herein, and each of said defendants for himself says he is guilty as charged in the indictment in the above-entitled cause."

Reading from page 23 of the same book:

United States
No. 1238. vs.
Clint Burris.

Indictment—Conspiracy to Commit an Offense against the United States.

3649 On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States the said defendant Clint Burris, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, A. D. 1915, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said Clint Burris for his said offense, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of six months, and that he pay to the United States of America a fine of Five Hundred Dollars, and that it have execution therefor, and that said defendant stand committed to said jail until said fine is paid.

It is further considered, that the marshal of the Western District of Arkansas, in whose custody the said Clint Burris is now here committed, receive and safely keep and convey the body of the said Clint Burris hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Clint Burris in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this Court furnish the marshal of this district with two duly certified copies

of this judgment, sentence and order, under the seal of the court, one of which shall be delivered to the keeper of
3650 said jail, and the other returned by the marshal to this court, with a full and true account of the execution of the same."

Mr. Hull: Is there any use to read all of these?

The Court: They may be considered as read.

Mr. Hull: We offer the judgment against Sandy Robinson on page 24 and on page 24 and 25 the judgment of the Court against James Slankard; and in the same book the judgment against John Manick on page 25; and a judgment against Peter Stewart under the same indictment, on page 25; and a judgment against Fred Holt, on page 25 and 26 of the same book; and on page 26 under the same indictment the judgment against James McNamara.

(The judgments so offered in evidence are in words and figures following, to-wit:)

United States.
No. 1328. vs.
Sandy Robinson.

Indictment—Conspiracy to Commit an Offense against the United States

On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States, the said defendant Sandy Robinson, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, A. D. 1915, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon, the premises being seen, and by the Court well and sufficiently understood, it is by the Court considered, ordered and adjudged that the said Sandy Robinson for his said offense, be imprisoned in the Sebastian County Jail for
3651 the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Six Months, and that he pay to the United States of America a fine of Five Hundred Dollars, and that it have execution therefor, and that said defendant stand committed to said Jail until said fine is paid.

It is further considered, that the [marshall] of the western District of Arkansas, in whose custody the said Sandy Robin-

son is now here committed, receive and safely keep and convey the body of the said Sandy Robinson hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Sandy Robinson in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this Court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the Court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal of this court, with a full and true account of the execution of the same."

"United States
No. 1238. vs.
James Slankard.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Esq., Special Assistant to the Attorney General of the United States, the said defendant James Slankard, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January 1915, shall not now be
3652 pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon, the premises being seen, and by the Court well and sufficiently understood, it is by the Court considered, ordered and adjudged that the said James Slankard for his said offense, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Six Months, and that he pay to the United States of America a fine of One Thousand Dollars, and that it have execution therefor, and that said defendant stand committed to said jail until said fine is paid.

It is further considered, that the marshal of the Western District of Arkansas, in whose custody the said James Slankard is now here committed, receive and safely keep and convey the body of the said James Slankard hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said James Slankard in jail in execution of the sentence afore-

said, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this Court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true account of the execution of the same."

"United States
No. 1238. vs.
John Manick.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Esq., Special Assistant to the
3653 Attorney General of the United States, the said defendant John Manick, was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20th day of January, A. D. 1915, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said John Manick for his said offense, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Six Months, and that he pay to the Unied States of America a fine of Five Hundred Dollars, and that it have execution therefor, and that said defendant stand committed to said jail until said fine is paid.

It is further considered that the marshal of the Western District of Arkansas, in whose custody the said John Manick is now here committed, receive and safely keep and convey the body of the said John Manick hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said John Manick in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the clerk of this court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the

court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court,
3654 with a full and true account of the execution of the same."

"United States
No. 1328. vs.
Peter R. Stewart.

Indictment—Conspiracy to Commit an Offense against the United States.

On motion of W. C. Fitts, Special Assistant to the Attorney General of the United States, the said defendant Peter R. Stewart was brought to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he had to or can say why the sentence of the law upon the plea of guilty heretofore entered by him in this cause on the 20 day of January A. D. 1915 shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said Peter R. Stewart for his said offense, pay to the United States of America a fine of One Thousand Dollars, and that it have execution therefor; and that said defendant stand committed until said fine is paid.

It is further considered, that the marshal of the Western District of Arkansas, in whose custody the said Peter R. Stewart is now here committed, receive and safely keep and convey the body of the said Peter R. Stewart [hance] to the Sebastian County Jail for the Fort Smith District, at Fort Smith, Arkansas, without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Peter R. Stewart in jail in execution of the sentence aforesaid until said fine is paid.

And it is further ordered, that the clerk of this court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal
3655 of the court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true [acount] of the execution of the same."

"United States
No. 1328 vs. Indictment
Fred Holt.

Conspiracy to Commit an Offense against the United States.

(In the same form as the preceding with the following exception: "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for a term and period of Six Months, and that he pay to the United States of America, a fine of One Thousand Dollars".)

"United States
No. 1238 vs. Indictment
James McNamara.

Conspiracy to commit an offense against the United States.

(In the same form as the preceding with the following exception: "be imprisoned in the United States Penitentiary situated at Leavenworth in the State of Kansas, for the term and period of two years, at hard labor, and that he pay to the United States of America a fine of One Thousand Dollars.")

And we offer from page 30 of the same book, of the proceedings of January 21, 1915, (Reading).

"Court met pursuant to adjournment. Present, the Honorable James D. Elliott, United States District Judge for the District of South Dakota, sitting by assignment.

United States
No. 1238 vs. Indictment.
Dave Brancl..

Conspiracy to Commit an offense against the United States.

(In the same form as the preceding with the following exception: "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Ar-
3656 kansas, for the term and period of Six Months, and that he pay to the United States of America a fine of One Thousand Dollars.")

And we offer from page 35 of the same record, proceedings of January 22, 1915, the plea of guilty of Oscar Layton and James Champion, on the same indictment, No. 1238, and the judgment of the Court on the same date that John Champion be imprisoned in the Sebastian County Jail for the Fort Smith District situated at Fort Smith, Arkansas, for

the term and period of six months, and that he pay to the United States of America a fine of One thousand Dollars."

And from the same page the judgment of the Court under the same indictment 1238, adjudging that Oscar Layton be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Six Months, and that he pay to the United States of America a fine of One Thousand Dollars.

(A recess was here taken of ten minutes.)

Mr. Hull: Reading from the same book on page No. 40 of the proceedings of January 25, 1915, we offer the plea of guilty of William Reed to the same indictment, No. 1238, and the judgment of the Court That he be imprisoned in the Sebastian County Jail for the Fort Smith District situated at Fort Smith, Arkansas, for the term and period of six months, and that he pay to the United States of America a fine of One Thousand Dollars."

And from page 137 of the same book, we offer from the proceedings of June 29, 1915, the plea of James Z. Crossley, of guilty, to indictment 1245 and the judgment of the court "that he be imprisoned in the Sebastian County Jail for the Fort Smith District situated at Fort Smith, Arkansas,
3657 for the term and period of Ninety Days, and that he pay to the United States of America, all its costs in and about this prosecution laid out and expended."

Mr. Hull: We offer from the Criminal Docket of the United States District Court of this District and this Division the entry on page 390 under Docket No. 1238 which shows that on,—

Mr. Warrum: The defendants separately object to the introduction in evidence of the entries on the Court Docket showing payment of fines, as throwing no light on the issues in this case.

The Court: No, I don't think so.

Mr. Hull: Does the Court remember that in the Secretary-Treasurer's report of the district that a fine was remitted of One Thousand Dollars to the district on account of Dave Branch, and that Dave Branch was one of these defendants? This is to show that this fine was paid by Dave Branch and that the money went back into the District Treasury.

The Court: I didn't catch that when we went through, though I heard it.

Mr. Hull: Another item was eight thousand and some odd dollars for fines of other men at Fort Smith.

The Court: The objection will be overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Mr. Hull (reading):

			Dr.	Cr.
"Jan. 20-1915		Webb Covington dep. acct-Stewart fine	1000.00	
" 21	"	M. N. Bk. Ft. Smith Cr. Tr. U. S.		1000.00
June 19,	"	Webb Covington dep. acct. fines		
3658		(Burris (Robinson (Slankard (Manick (Holt (Branch (Champion (Layton (Reed	7500.00	
June 28, 1915		M. N. B. Cr. Tr. U. S.		6500.00
Aug. 2	"	Webb Covington Refund Branch fine		1000.00"

Mr. Drinker: If the Court please, we now offer Judge Youmans Opinion in the contempt proceedings in which he sentenced these people here, a number of the same ones, and some additional ones, to a jail sentence for violation of the injunction; there being two proceedings in which the members were fined and imprisoned, and we offer the opinion as being the best evidence of what the sentence was and what it was for.

Mr. Warrum: Defendants separately object to the introduction in evidence of the opinion,—

The Court: Objection sustained.

Mr. Drinker: We then offer the conclusion of Judge Youmans opinion sentencing individual persons on account of a violation of the contempt proceedings, without giving any reasons.

Mr. Warrum: Defendants renew their objection.

The Court: Are these the persons that have been named here in these various exhibits?

Mr. Drinker: Oh, yes, Clint Burris and the same crowd. We have read dozens of Journal proceedings to show that the National knew what was going on, and then Judge Youmans sentenced these people for contempt of Court for doing the very things this suit is about, and after that Mr.
3659 White discusses it and,—

The Court: What do you offer?

Mr. Drinker: Judge Youmans opinion.

The Court: That is not competent.

Mr. Drinker: Then we offer the judgment of the court, sentencing these people to jail sentences, and the relevancy depends upon the fact that it was upon this very thing they were sentenced.

The Court: I sustained it because it did not occur to me that you could show that. I don't think that the opinion is material, and the sentence alone doesn't mean anything.

Mr. Drinker: Then we offer the information, or whatever the plea is called, and the sentence.

The Court: It must have been an indictment.

Mr. McDonough: It was an application, in the injunction cases.

The Court: Oh, for violation of the injunction?

Mr. McDonough: Yes, sir.

The Court: Then if any of that record is competent so much of it that shows what the charge was and that the application was made in the injunction proceedings, together with the judgment and pleadings, would all have to go in. You cannot put in the sentence alone, and the opinion itself is not material.

Mr. Drinker: In connection with the fact as to the question,—

The Court: No, it is not material at all and we won't spend any time on it.

Mr. McDonough: We wish to show in the record, not offering the opinion, but we offer the judgment of the
3660 Court with the opinion, and then if counsel require it or objection is made, we then offer the application for the injunction, to show what it was.

The Court: You have offered it and it was objected to and the objection has been sustained.

Mr. McDonough: Then we offer the whole the application the judgment of the Court and the opinion.

The Court: The opinion is not competent.

Mr. McDonough: Then leave the opinion out.

Mr. Drinker: Mr. Wellshear has not the application here. We will go on with another item of our proof while we are getting that.

We offer from the expense accounts of John P. White, produced by the defendants United Mine Workers of America in answer to the orders of the Court, for the last half o' April, and for the whole of May, June, July and August, 1914 being papers marked respectively Plaintiffs Exhibit 213 to 218 inclusive, and if I may refer to anyone of them in the course of argument, without reading them, I won't read any of them, but if it is necessary to read them to the jury to refer to them in the argument I will read them all.

The Court: They may be considered in evidence.

Mr. Warrum: I would like to object.

The Court: To their introduction?

Mr. Warrum: Yes, sir. The defendants separately object to the introduction in evidence of Plaintiffs Exhibits 213 to 218 inclusive, being the accounts of John P. White for his expenses, because they do not purport to have any relation to the subject matter of this controversy, and without any
3661 explanation they are incompetent.

The Court: What are these, gentlemen?

Mr. Drinker: It is the same thing that was introduced yesterday, to show where Mr. White went, and his purpose, and to get Mr. White, Mr. Mullin, and Mr. Stewart at the same place.

Mr. Warrum: There is the best illustration on an inference that I have seen. They have Mr. White in Kansas City

by his expense account; Mr. Mullin is in Kansas City, and Mr. Stewart, and then the inference follows that they were all together, and then the inference is drawn from that that they talked together, and the inference is drawn from that that they talked about this particular thing.

The Court: Objection sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Drinker: May I make one illustration?

The Court: No.

Mr. Drinker: Just for the record I offer the same accounts of Mr. Mullins for the same period, being April, May, June July and August 1914, and being Exhibit Nos.,—

The Court: You can insert the numbers later.

Mr. Warrum: Defendants separately renew their objection.

The Court: Objection sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Mr. Hull: I find that the judgment in the contempt cases sufficiently recite the decree.

3662 The Court: It wouldn't be a judgment if it didn't.

Mr. Warrum: The defendants separately object to the introduction in evidence of the judgments now offered in the contempt proceedings, because they do not throw any light on any issuable fact in this case, and they are not binding on the defendants in this case.

3663 Mr. Hull: We offer from page 614 of the Common Law Record Volume 57 of the United States District Court of the Western District of Arkansas, Fort Smith Division, September 1, 1914, June Term 1914, the attachment for contempt against Sandy Robinson, Nos. 1179 and 1202. "This day comes the United States of America by James V. Bourland, Esq., United States Attorney for the Western District of Arkansas, and one J. B. McDonough, Esq., and comes the defendant Sandy Robinson in his own proper person and by Webb Covington, Esq., and W. R. McFarlane, Esq., his attorneys, and the above-entitled cases having been heretofore heard argued and submitted, the Court being now well and sufficiently advised in the premises, doth find the defendant,

Sandy Robinson, guilty of contempt of court in each of the above entitled cases in that he violated the decree of this court entered on the 9th day of May, 1914, in the case of Mammoth Vein Coal Mining Company, plaintiffs, vs. M. Hunter, et al., defendants, numbered 241 in equity; and it is ordered that said cases be consolidated for judgment and [sentecne].

Whereupon, the premises being seen, and by the Court well and sufficiently understood, it is by the Court considered, ordered and adjudged that the said Sandy Robinson, for his said contempt, be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of sixty days, and that he pay to the United States of America all its costs in and about this prosecution laid out and expended, and that it have execution therefor.

It is further considered, ordered and adjudged, that the marshal of the Western District of Arkansas, in whose custody the said Sandy Robinson is now here committed
3664 receive and safely keep and convey the body of the said Sandy Robinson hence to said Sebastian County Jail without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Sandy Robinson in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And it is further ordered, that the Clerk of this court furnish the marshal of this district with two duly certified copies of this judgment, sentence and order, under the seal of the Court, one of which shall be delivered to the keeper of said jail and the other returned by the marshal to this court, with a full and true account of the execution of the same."

Mr. Hull: We offer from page 615 of the same book a similar judgment against Clint Burris, attachment No. 1201, the judgment being that he "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Thirty Days and that he pay to the United States of America all its cost in and about this prosecution laid out and expended."

We offer from the same page, judgment against Peter R. Stewart, attachment No. 1182, attachment for contempt, the sentence being that he "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Four Months and that he pay to the United States of America all its costs in and about this prosecution laid out and expended."

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which ruling of the Court, the defendants, and each
3665 of them, at the time duly excepted and still except.

Mr. Hull: We offer from page 616,—

Mr. Warrum: I would like to have the record show the defendants separately object to each of these offers.

The Court: It may so show.

Mr. Hull: Page 616 of the said record, judgment of the Court in No. 1200 and 1229 attachment for contempt against John Manick, the sentence being that he "be imprisoned in the Sebastian County Jail for the Fort Smith District situated at Fort Smith, Arkansas, for the term and period of Four Months, and that he pay to the United States of America all its costs in and about this prosecution laid out and expended."

And we offer from pages 616 and 617 of the same record, the judgment in No. 1227, United States against Pink Dunn, attachment for contempt, judgment finding him guilty, the sentence being that he "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Four Months, and that he pay to the United States of America all its costs in and about this prosecution laid out and expended."

And also from page 617 of the same record the judgment of the Court, No. 1228, George Burnett, attachment for contempt, judgment finding him guilty, the sentence being that he "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Four Months, and that he pay to the United States of America all its costs in and about this prosecution laid out and expended."

3666 We offer a similar judgment on page 618 No. 1230 attachment in [conetmpt] United States vs. Frank Gripando, the sentence being that he "be imprisoned in the Sebastian County Jail for the Fort Smith District, situated at Fort Smith, Arkansas, for the term and period of Four Months, and that he pay to the United States of America all its costs in and about this prosecution laid out and expended."

The Court: Now what is there to show that this contempt proceeding had reference to this particular matter?

Mr. Hull: It refers to the decree rendered on May 9th and that is also in evidence as part of the indictment offered.

The Court: It will be so considered.

Mr. Drinker: Now, if the Court please, we offer in evidence the contract [betwee] the Bache-Denman Coal Company and the Chicago, Rock Island & Pacific Railroad which was identified by Mr. Bache or Mr. Denman, I forget which, being Plaintiffs Exhibit 159. It was then offered in connection with damages, but now offered for this purpose, that it is a contract between this company and the Rock Island Railroad requiring the shipment of a certain amount of coal over that railroad, and by reason,—the necessary result of the destruction of these tipples was to prevent a compliance with the terms of this contract, and therefore to interfere with so much of the traffic under that contract as was interstate, as shown by the testimony.

The Court: Very well, it may be received.

(Exhibit 159 so offered in evidence is in words and figures following, to-wit:)

"Bond.

3667 Know all men by these presents: That we, Bache-Denman Coal Company, a corporation under the laws of the State of West Virginia, having its principal office in the city of Fort Smith, Arkansas (hereinafter called the Principal), and the Maryland Casualty Company, a corporation under the laws of the State of Maryland, having its principal office in the City of Baltimore, Maryland, and duly authorized to act as sole surety in the State of Arkansas, (Hereinafter called the Surety), are held and firmly bound unto the Chicago, Rock Island and Pacific Railway Company, of Chicago, Illinois, in the full and just sum of Fifteen Thousand Dollars ($15,000.), in the payment of which said sum of money, the said Principal binds itself, its successors and assigns, jointly and severally, and the said Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents, signed, sealed and dated this Twenty-First day of March, A. D., 1911.

Now therefore, the condition of this obligation is such, that the said Principal has entered into a certain agreement with the Chicago, Rock Island and Pacific Railway Company for the purpose of securing a certain switch or trackage, as described in the contract or agreement made a part hereof, and

if the said Principal shall comply with the conditions of Section "3" of the said agreement, then this obligation to be null and void, otherwise to remain in full force and effect.

BACHE-DENMAN COAL COMPANY
(Seal) —Principal.
By (Signed) F. Bache, President.

Attest:
Heber Denman,
Secretary.

3668 MARYLAND CASUALTY COMPANY
Surety.
By (Signd) W. A. O'Conner, Agent.

Countersigned by Jas. F. Read, Attorney-in-fact."

"This agreement, made in duplicate and entered into this 21st day of March A. D., 1911, by and between the Chicago, Rock Island and Pacific Railway Company, a corporation of the States of Illinois and Iowa, hereinafter called the "Railway Company," party of the first part, and the Bache-Denman Coal Company, a corporation existing under the laws of the State of West Virginia, hereinafter called the "Coal Company," party of the second part, Witnesseth:

That, whereas, The Mammoth Vein Royalty Company, a corporation of the State of Arkansas, owns Lots 15, 16 and 21, in Section 2, Township 4 north of Range 32 West, in Sebastian County Arkansas, which lands are underlaid with coal, and are leased to the Mammoth Vein Coal Company, a corporation of the State of Arkansas, which company, in removing the coal therefrom, is operating through the opening known as the Mammoth Vein No. 1; and,

Whereas, the Hartford Coal Company, a corporation of the State of Oklahoma, owns Lots 18, 19 and 20, in said Section 2, which lots are underlaid with coal, the mining of which is leased to the Hoffman Coal Company, a corporation of the State of Arkansas, which, through Bennet Brown, trustee, is operating the mine thereon, known as the Hoffman Mine, which said lease will terminate on November 1, 1914; and,

Whereas, said Hartford Coal Company also owns Lots 15 and 16 in Section 3, in said Township and Range, and the northwest quarter of the southeast quarter of Section
3669 3, all underlaid with coal, the mining of which is being carried on by said Hartford Coal Company; and,

Whereas, the Bache-Denman Coal Company owns the whole or controlling stock interest in said Mammoth Vein Royalty

Company, Mammoth Vein Coal Company and Hartford Coal Company, and, in order to obtain adequate facilities for the mining and marketing of the coal from the lands above described, which are shown in Yellow coloring on the plat hereto attached, marked "Exhibit A" and made a part hereof, has requested, and [doed] hereby request, the Railway Company to extend its track from a connection with its main track, on its Indian Territory Division, in Section 11, in said Township and Range, being a point between one and two miles distant, easterly, from its station at Hartford, in said county of Sebastian, in a northerly and northwesterly direction to its termination at the southerly right of way line of the railway of the Midland Valley Railway Company in Lot 21 in section 2. Said main side track, with the east leg of Wye track connecting the same with the main track of the Railway Company and also the tipple and storage tracks at the termination of said main side track necessary to accommodate the loading of coal from the tipple, there to be located and constructed by the Coal Company, into the cars of the Railway Company, for transportation thence to the various markets therefor, are respectively described as follows: 2 1/5—

Main Side Track.

A main spur track commencing in the center of the main track of the Railway Company at Profile Station 897 plus 95, which profile station is 925.4 feet westerly from the intersection of the center line of the main track of the Railway
3670 Company and the east line of Section 11, Township 4 North, Range 32 West, measured along the center line of the main track of the Railway Company; thence northeasterly through a standard No. 10 turnout to the left a distance of 86 feet to the heel of the frog; thence on tangent to the last described course a distance of 36.7 feet; thence northeasterly on a 9 degree 00 minute curve to the left, a distance of 333.1 feet; thence northeasterly on an 8 degree 20 minute curve to the left a distance of 644.2 feet; thence northerly, tangent to the last described course, a distance of 92.2 feet; thence northerly on a 7 degree 30 minute curve to the right, a distance of 477.3 feet; thence northeasterly tangent to the last described course a distance of 371.3 feet; thence in a northerly direction on a 5 degree 00 minute curve to the left, a distance of 1201.0 feet; thence northwesterly, tangent to the last described course, a distance of 2529.2 feet; thence in a northerly direction on a 6 degree minute curve to the right a distance of 119.2 feet; thence in a northerly direction, tangent to the last described course, a distance of 7.8 feet; thence northwesterly on a curve to the left, through a standard No. 8 turnout a dis-

tance of 75 feet to a point in the center line of a spur track hereinafter described as tipple track No. 1 said point being 510.6 feet northwesterly from the point of intersection of the center line of tipple track No. 1 and the east and west center line of Section 2 Township 4 North, Range 32 West, measured along the center line of said Tipple No. 1 total length of said main spur track being 5973 feet, 297 feet of which lies upon the present right of way of the Railway Company and 5180.5 feet of which lies upon land to be acquired by the Mammoth Vein Coal Company and transferred to the Railway
3671 Company, and 494.5 feet of which lies upon land now owned or controlled by the Mammoth Vein Coal Company, all of said track lying in Sections 2 and 11, Township 4, North, Range 32 West, Sebastian County, Arkansas, said track being hereinafter referred to as the main side spur.

East Leg Of Wye Track.

Also a track, hereinafter referred to as the East Leg of Wye Track, commencing at a point in the center line of the main track of the Railway Company, at profile station 912 plus 87.7 which profile station is 567.3 feet easterly, measured along the center line of the main track of the Railway Company, from the intersection of said main track and the west line of Section 12, Township 4 North, Range 32 West thence northwesterly, through a standard No. 10 turnout to the right, a distance of 86 feet to the heel of the frog; thence northwesterly on a 7 degree 30 minute curve to the right, a distance of 1036.3 feet to the heel of the frog; thence northerly, through a standard No. 8 turnout to a connection with the "main side track" hereinbefore described, at station 11 plus 75 of said Main Side Track, the total length of said east leg of the wye track being 1197.3 feet 283 feet of which lies on the present right of way of the Railroad Company and 914.3 of which lies on land to be acquired by the Mammoth Vein Coal Company, all of said East Leg of Wye Track lying in Sections 11 and 12, Township 4 North, Range 32 West, Sebastian County Arkansas.

Tipple Track No. 1.

Also a track, hereinafter referred to as Tipple Track No. 1, commencing at a point on the main side track, above descried, at profile station 43 [pluss] 00 of said main side track, which point is 1177.5 feet southeasterly from the in-
3672 tersection of center line of said main side track, and the east and west center lines of Section 2, Township 4 North, Range 32 West, measured along the center line of said main side track; thence in a northwesterly direction,

through a standard No. 8 turnout to the right, a distance of 75 feet; thence northwesterly, tangent to last described course, a distance of 7.8 feet; thence northwesterly on a 6 degree 00 minute curve to the left a distance of 119.2 feet to a point 14 feet northeasterly at right angles from said main side track; thence northwesterly, parallel to and 14 feet northeasterly from the said main side track, a distance of 1471 feet to the connection with the main side track, at profile station 59 plus 73 of said main side track; thence continuing in the same tangent line a distance of 164 feet to the end of the track at the south right of way line of the Midland Valley Railway Company, the total length of said tipple track No. 1 being 1837 feet, 1162.4 feet of which lies upon land to be acquired by the Mammoth Vein Coal Company, and 674.6 feet of which lies upon land now owned or controlled by the Mammoth Vein Coal Company, all of said tipple track No. 1 lying in Section 2, Township 4 North, Range 32 West, Sebastian County, Arkansas.

Tipple Track No. 2.

Also a track, hereinafter referred to as Tipple Track No. 2, commencing at a point on Tipple Track No. 1, 12.6 feet northwesterly from the intersection of tipple track No. 1 and the east and west center line of Section 2 Township 4 North, Range 32 West, measured along the center line of tipple track No. 1; thence northwesterly, through a standard No. 8 turnout to the right, and curve to the left, a distance of 175 feet to a point 13 feet northeasterly at right angles from
3673 the center line of tipple track No. 1; thence northwesterly parellel to and 13 feet northeasterly from the center line of tipple track No. 1, a distance of 228 feet; thence northwesterly 175 feet on a 10 degree 00 minute curve to the left and tangent through a standard No. 8 turnout to a connection with tipple track No. 1, at a point opposite station 60 plus 53 of main side track, the total length of said tipple track No. 2 being 578 feet, all of which lies on land now owned or controlled by the Mammoth Vein Coal Company; all of said Tipple Track No. 2 lying in Section 2, Township 4 North, Range 32 West, Sebastian County, Arkansas.

Tipple Track No. 3.

Also a track, hereinafter referred to as Tipple Track No. 3, commencing at a point on Tipple Track No. 2, 92.6 feet northwesterly from the intersection of Tipple Track No. 1, and the east and west center line of Section 2, Township 4 North, Range 32 West, measured along the center lines of Tipple Tracks Nos. 1 and 2; thence northwesterly tangent

through a standard No. 8 switch a distance of 92 feet; thence northwesterly on a 12 degree 00 minute curve to the left a distance of 77 feet to a point 13 feet northeasterly from Tipple Track No. 2, northwesterly, a distance of 80.0 feet; thence on a 12 degree 00 minute curve to the left a distance of 77 feet northwesterly; thence northwesterly, tangent to the last described course, a distance of 92 feet through a standard No. 8 turnout to a connection with Tipple Track No. 2 at a point opposite Station 59 plus 73 of the main side track hereinbefore described, the total length of said Tipple Track No. 3 being 418 feet all of which lies upon land now owned or controlled by the Mammoth Vein Coal Company, in Section 2, Township 4 North Range 32 West, 3674 . Sebastian County, Arkansas.

Empty Storage Track No. 1.

First of that portion of Tipple Track No. 1 hereinbefore described lying northwesterly from a point in center line of said Tipple Track No. 1, said point being 493.6 feet northwesterly from the point of intersection of said tipple track No. 1 and the east and west center line of Section 2, Township 4 North, Range 32 West, measured along the center line of said tipple track No. 1, shall be thrown over westerly to a new location and extend to make an empty storage track as hereinafter described.

Beginning at a point in Tipple Track No. 1 hereinbefore described 493.6 feet northwesterly from the point of intersection of said Tipple Track No. 1 and the east and west center line of Section 2, Township 4 North, Range 32 West, measured along the center line of said Tipple Track No. 1; thence Northwesterly on a 10 degree 00 minute curve to the left a distance of 92 feet; thence in a northerly direction on a 10 degree 00 minute curve to the right a distance of 92 feet; thence on a tangent to the last described course northwesterly, a distance of 92 feet; thence northeasterly on an 18 degree 00 minute curve to the right a distance of 488.2 feet; thence tangent to the last described course northeasterly 279.8 feet to the end of the track, the total length of said track being 1044 feet, 181 feet being removed and thrown to new location from original Tipple Track No. 1 hereinbefore described and 863 feet being new track; 844 feet of the above described track lying on land owned or controlled now by Mammoth Vein Coal Company and 200 feet lying on land to be acquired by the Mammoth Vein Coal Company from the Midland Valley Railway Company, all of said track lying in Section 2, Township 4 North, Range 32 West, Sebastian County, Arkansas.

3675 Empty Storage Track No. 2.

Also a track, hereinafter referred to as Empty Storage Track No. 2, commencing at a point in the center line of empty storage track No. 1, 777.6 feet [northwesterly] from the point of the intersection of Tipple Track No. 1 and the east and west center line of Section 2, Township 4 North, Range 32 West, measured along the center line of Tipple Track No. 1 and Empty Storage Track No. 1; thence northwesterly through a standard No. 8 turnout to the left and thence on an 18 degree 00 minute curve to the right and 14 feet northerly from and paralled to the said empty storage track No. 1, a distance of 480.2 feet; thence northeasterly, tangent to the last described course and 14 feet northerly from and parallel to Empty Storage Track No. 1, a distance of 279.8 feet to the end of the track, the total length of said Storage Track No. 2 being 760 feet, 666.5 feet of which lies upon land now owned or controlled by the Mammoth Vein Coal Company and 93.5 feet of which lies upon land to be acquired by the Mammoth Vein Coal Company, all of said Empty Storage Track No. 2 lying in Section 2, Township 4 North, Range 32 West, Sebastian County, Arkansas.

For a more particular description of said trackage, and of the right of way to be deeded to the Railway Company as hereinafter stated, reference is hereby made to the print hereto attached, marked "Exhibit B" and made a part hereof, upon which said trackage is indicated by the lines colored red, and the right of way therefor by the coloring in dark-red; and,

Whereas, the Coal Company agrees, at its own expense, to obtain deeds for the necessary right of way for the trackage to be constructed hereunder; and,

Whereas, in its various undertakings, in this agree-
3676 ment contained, the Coal Company is held and understood to speak in its own name, in behalf of itself and any and all of its aforesaid auxiliary companies; and,

Whereas, the Railway Company is willing to construct, maintain and operate said trackage upon the terms and conditions of this present agreement, in writing;

Now, Therefore, for and in consideration of the premises, and of the mutual and dependent covenants and agreements herein contained, to be by them respectively kept and performed, the parties hereto have agreed, and do hereby covenant and agree, each with the other, as follows:

1. The Coal Company shall, at its own sole cost and expense, procure, and cause to be deeded to the Railway Compony, the necessary right of way for all of said trackage north of the right of way of the Railway Company used for its main track; and, thereafter, the Railway Company shall, at its own sole cost and expense, construct, maintain and operate all of the trackage covered by this agreement.

2. The Coal Company disclaims ownership in any portion of said trackage, and agrees that the Railway Company may use the same, or any portion thereof, in connection with extensions of the same, which it may at any time construct for the purpose of reaching business and industries other than the business and industries of the Coal Company; and that the Railway Company may handle and transport the business of others either upon or along said trackage, and any extension thereof.

3. As an essential consideration for the construction of said trackage by the Railway Company, the Coal Company expressly covenants and agrees that it will ship a minimum quantity of forty thousand (40,000) tons of coal on or
3677 before the thirty-first day of January, 1912, and thereafter, a minimum quantity of seventy-five thousand (75,000) tons of coal per annum for a period of four and one-half years therefrom; that is to say, for a period ending with July 31, 1916, or failing to do so, it will pay to the Railway Company a sum computed at the rate of ten (10) cents per ton for each and every ton of coal of said minimum quantity which it shall have failed to ship as aforesaid, the payments thereof to accrue as of the first day of February, 1912, and annually therefrom, and also on the first day of August, 1916, said payments by the Coal Company to the Railway Company, to be made at the office of its treasurer in the City of Chicago, Illinois, upon demand after accrual, or, in the absence of such demand, not later than thirty days after such accrual, and the Coal Company will, as a further part of the consideration of this agreement, make, execute and deliver to the Railway Company a bond in the penal sum of fifteen thousand dollars..... ($15,000.00) with a good and sufficient surety company, or companies, as sureties thereof, conditioned for the faithful performance of this covenant hereof; provided, however, that, if a satisfactory surety company cannot be secured for this service, there may be substituted personal sureties satisfactory to and approved by the Railroad Company.

4. The Railway Company, its successors, assigns and lessees, shall have the right, at any time after July 31, 1916, when, in its opinion, the business furnished by the Coal Company does not justify the continued maintenance and operation of said trackage, after giving to the Coal Company thirty (30) days notice in writing of its intention so to do, to discontinue the use of said trackage, and, it [it] shall so elect, to remove the same, together with the connec-
3678 tions, switches, and frogs, and all other material used in connection therewith, or any part thereof.

5. The Coal Company, in sonsideration of the premises, and as an inducement to the Railway Company to enter into this agreement, and to construct, maintain and operate said trackage, hereby agrees that the Railway Company, its successors, assigns and lessees shall not be liable for, or on account of, any loss or damage which may at any time, in any manner, arise, or be sustained by the Coal Company, or by its successors, lessees, legal representatives, assigns, bailors or bailees, by reason of fire communicated to any of the building or structures of the Coal Company, which are now, or shall hereafter be erected on, or near, any portion of said trackage, or to the contents thereof, or to property of any kind owned or stored by the Coal Company, or by others, along any portion of said trackage, by the locomotives, engines, cars or trains of the Railway Company, its lessees, successors, and assigns, or arising in any manner from the operation of any portion of said trackage, and shall fully protect and save harmless the Railway Company from all liability for loss or damage by reason of fire so communicated to any of said property; and the Coal Company also agrees that it will make against the Railway Company no claim or demand arising from shortage of cars for any period during which the car supply furnished the Coal Company is upon the same basis as that furnished other coal Companies in that district.

6. Said Coal Company shall not erect, or allow to be erected, except in connection with the tipple and car haul structures used therewith, any building, structure, or fixture, or place material of any kind in dangerous proximity to any of said trackage, and, in no case, with the exception
3679 just stated, shall any such buildings, structure, fixture, or material be placed without giving a clearance of at least six (6) feet from th nearest rail of said trackage, and head room, with the exception last stated, of not less than twenty-five (25) feet above the tops of the rails thereof.

Furthermore, if, at any time, by any law or ordinance of Federal, State or other governmental authority, any horizontal or vertical clearance, different from that then obtaining in the operation of said tipple, shall be required, the Coal Company agrees to reconstruct and conform its structures thereto at its own sole expense. Said Coal Company shall protect, indemnify and save harmless the Railway Company, its successors, [leesees] and assigns, against all loss, damage and expense in consequence of injury to person or damage to property by reason of the erection or maintenance, at any time, of any such building, structure, of fixtures, or by reason of the placing of material of any kind in dangerous proximity to said trackage contrary to the provisions of this section, whether the negligence of the Railway Company, its agents, servants, or employees shall have contributed to such injury to person or damage to property or not.

7. It is expressly agreed and understood that the Coal Company is not to mine and ship coal from Lots 18, 19 and 20, in said Section 2, until after the expiration of the lease thereof, as aforesaid, but that, beginning with November 1, 1914, the coal therefrom will be mined and handled under this agreement.

8. This agreement and all the terms and conditions, rights and obligations herein contained, shall inure in favor of, and be binding upon the respective successors, assigns, lessees and legal representatives of both parties hereto, whether hereinbefore expressly so stated or not.

3680 In Witness Whereof, the parties hereto have caused these presents [t] be executed by their proper officers, thereunto duly authorized, respectively, and their respective corporate seals to be hereto attached and attested, the day and year first above written.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By .....
President.

BACHE-DENMAN COAL COMPANY,
By .....
President.

Attest:
Heber Denman,
Secretary."

Mr. Drinker: If the Court please, I find that there are two more exhibits I did not introduce. I offer in evidence Plaintiffs Exhibits 40 and 41, being copies of letters written by the companies to the United States Marshal, and to Mr. Cameron, and identified by the witness Bache, in connection with his cross examination. I find I omitted to offer them.

Mr. Warrum: The defendants separately object to the introduction in evidence of the letters now offered, for the reason that they are a self-serving declaration, and not binding in any manner on these defendants.

The Court: I think the Court will admit them as being one of the items of the condition that they claim existed; statement of the condition that is claimed by the plaintiffs to have existed at the time. The statement not having been made by the plaintiffs, but by one in his employ.

Mr. Warrum: Letters written by the coal companies?

3681 Mr. Drinker: Mr. Bache wrote to the marshal.

The Court: I am thinking of the one that Cameron wrote.

Mr. Warrum: That has been introduced.

The Court: I supposed that that was this one. The objection will be overruled, they will be received.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

(Exhibits 40 and 41 so offered in evidence are in words and figures following, towit:)

Exhibit No. 40.

"United States Marshal, May 23, 1914.
Western District Arkansas,
Fort Smith, Ark.

Dear Sir:

The Mammoth Vein Coal Mining Company expects, in the course of a few days, to ship coal from its mine #4, near Prairie Creek, Arkansas. The United States Court for the District of Arkansas granted a Perpetual Restraining Order against certain named parties and others, restraining them from interfering with the operation of the Company's business.

The order provided for the stationing of possemen at the mine, in case it was deemed necessary for enforcing the decree of the Court.

As you know, there was disorder at the mine, resulting in the severe beating of four men, previous to the granting of the Temporary Restraining Order, and since that time, many threats have been made and at least one man was attacked, as testified at the hearing for the Perpetual Restraining Order.

I am advised that it is not the purpose of the Union men, opposed to the operation of the mine on the open shop
3682 plan, to create any serious disorder so long as the Company is confining itself, as it is at present, in spending money in pumping out the mine; but that as soon as they commence to ship coal, an attempt will be made to stop the operation of the mine.

This is a matter of common belief and could be testified to by a large number of parties. I, therefore, believe it will be desirable to place deputy marshals at the property for the purpose of preventing disorder.

I have instructed the employees of the Company that they were not to create or initiate any disorder and were not to resort to the use of firemams, except to protect their lives or the lives of others.

And I am confident that if you would place a few possemen at the mine that the Union men will not make any serious disturbance, and I am equally confident that if you do not, that they will make a disturbance, believing as they probably will, however erroneously, that the lack of possemen, is for the purpose of permitting them to do damage to persons and property, and thereby prevent the operation of the mine as an open shop mine.

This is the only way it can be prevented as there are a considerable number of men, who wish to work "open shop" and will do so unless violence is attempted, which would be a violation of the Court's decree.

I am sure the employment of a few possemen at the mine now will prevent an outbreak of any disorder or violation of the Court's decree and am equally certain that there will be a violation of the Court's decree and violence on the part of the Union men or their sympathizers, unless possemen are placed at the mine on or before the time of our shipping coal.

3683 And that once violence has started, it will require the continued employment of large numbers of possemen to prevent the continued violation of the Restraining Order;

in other words, a little precaution now will save a great deal of trouble later.

I herewith enclose copy of letter, written by me to Mr. John S. Cameron, Superintendent of Mines, embodying my directions as to the peaceful behavior of employees of the company.

This letter to Mr. Cameron is superfluous as it is very unlikely that the 30 or less men at the mine would deliberately initiate violence with one or two thousand union men on the other side; but I am impelled to give these instructions in writing and at the same time write you, in order to place the company on record before any violence is committed, which violence I am certain will be committed by the union men and their sympathizers unless possemen are placed at the mine when we commence to load the coal.

Very truly yours,

FB/EB
enc."

Exhibit No. 41.

"May 23, 1914.

Mr. John S. Cameron,
Superintendent Mines,
Midland Ark.

Dear Sir:

I wish to reiterate in writing what I have heretofore said verbally that under no circumstances are employees of this Company to use any violence towards members of the Union or their sympathizers or other parties, except in defense of their lives or the lives of others with them.

3684 All parties are restrained by the United States Court from interfering with the operation of our property and it is most highly desirable that we so conduct ourselves and direct our employees to so conduct themselves, that in case of any violence it can be clearly shown that it was not initiated by us.

I am aware that it is absurd to anticipate that the 30 or less men employed by us are going to deliberately iniaiate violence with two thousand or more men in the Union but if any violence does result from our "open shop" operations, we know that the union men will endeavor, through the Press and otherwise, to give the impression that we or our employees started it.

For the above reasons, I wish you would impress upon each and every employee that they must not start any violence and their only excuse for violence will be to protect their own persons or lives or the persons and lives of others.

Very truly yours,

FB/EB"

Mr. Drinker: Now, if the Court please, I want to recall Mr. Finley, for two or three questions, and we will be through.

3685 C. H. FINLEY, recalled as a witness in behalf of the plaintiffs, and having been previously sworn, testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. Finley, you stated in your direct testimony that you went down to the property, I believe on July 16th?

A. Yes, sir.

Q. When you arrived there on July 16th, what condition did you find the mines in with reference to being able to hoist coal, at No. 4?

A. They were loading coal when I was there.

Q. How long had they been loading coal, if you know?

A. They dumped the first coal on the 10th, over the tipple there.

Q. And do you know as to what condition the company was in relative to its ability to obtain men to work?

A. Well, there was men there that they were putting to work, just as fast as they could get to it, and more coming. They seemed to be coming really faster than they could find places for them to work at that time, that day I was there.

Q. How much tonnage, per day, was that mine in condition to get out when you saw it on July 16th?

A. I don't remember what tonnage they got out on July 16th, but in my opinion it was, when I saw it, that we could get at least 300 tons a day, there inside of a week or ten days.

Mr. Drinker: You may cross-examine.

Mr. Covington: No questions.

(Witness excused.)

3686 Mr. Drinker: Now the only thing left is that there are two minute books that have not been produced yet. They are the particular ones this 2110, Camp Beulah,—

The Court: Are they the ones referred to this morning?

Mr. Drinker: Yes, sir.

The Court: What effort has been made?

Mr. Covington: I made inquiry about them, and nobody seemed to know anything about it, and I have sent down this afternoon to see if the Secretary knows anything about them. They have not gotten in yet, it is about thirty miles down there.

The Court: The plaintiffs may close their case now, with the privilege of putting on such testimony as they desire with reference to these two books. Let the record so show.

Mr. Drinker: The plaintiffs close, subject to that reservation.

Mr. Warrum: The defendants have a motion we wish to submit.

The Court: Do you want to be heard tonight?

Mr. Warrum: After the jury is alloved to go?

The Court: Yes, sir.

Mr. Warrum: I have no objection to it That might facilitate and accelerate matters.

The Court: Gentlemen of the jury, ve have reached the close of the Plaintiffs case. We will now stand adjourned until tomorrow morning at 9:30.

3687 (Defendant's Motion for a directed verdict and motion to strike out certain testinony denied and exceptions thereto.)

Fort Smith, Arkansas.

Tuesday, November 13, 1917 9:30 o'clock A. M.

Pursuant to adjournment as last aforesaid came all of the parties as before on Tuesday Novembe· 13, 1917, at 9:30 o'clock A. M. and the trial of the case proceeding as follows:

Mr. Warrum: The defendants have a motion, reduced to writing, in which they move to strike out certain evidence, which we will file with the clerk; and also a motion on the part of certain of the defendants, asking that the jury be directed to return a verdict for them.

The Court: Read the motions, Mr. Warrum, or pass them to the Court.

Mr. Warrum: I will pass them to the Court, and file them with the clerk.

The Court: Your attention is called to the fact that you have neglected to sign your motion.

Mr. Warrum: The original is signed.

The Court: I beg your pardon:

Mr. Warrum: I had three copies and I signed one.

The Court: Let the record show the filing of the motion to strike certain evidence from the record; also the motion for judgment on behalf of certain defendants named in the motion, for a directed verdict in behalf of the defendants named in the motion. And the Court is of the opinion that in considering the issues that are involved here and the state of this record, that it ought not to exercise its discretion at this time to determine the motion to direct a verdict, until the close of all of the testimony in the case. That being
3688 true, I am inclined to reserve final determination of the motion to strike until the same time.

The motion to strike is therefore denied, with an exception to the defendants. The motion to direct a verdict is also denied, with an exception to the defendants, and with the suggestion of the Court that the right is expressly reserved to the defendants to renew both the motion to strike and the motion to direct a verdict at the close of all of the testimony in the case.

Is that record sufficient, Gentlemen?

Mr. Warrum: Yes, your Honor.

3689 Defendants' Evidence.

WILLIAM GREEN, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name to the Court and jury.

A. William Green.

Q. What official position do you hold in the United Mine Workers of America, the International Organization?

A. International Secretary-Treasurer.

Q. How long have you held that position?
A. Well, about five years.
Q. What position, if any, did you hold before that time, in either the International Organization or any district organization?
A. I served as President of the Ohio District for four years, and International Statistician for some time following.
Q. Your home is in Ohio? A. Yes, sir, Coshopton, Ohio.
Q. What was your occupation?
A. I worked in the mines.
Q. Your deposition was taken in this case, was it not, Mr. Green? A. Yes, sir.
Q. You are the Mr. Green who deposed in this case in September, is that right? A. Yes, sir.
Q. I want to ask you now, Mr. Green, what, if any monies were paid out by the International Organization on account of the labor controversies between these plaintiff companies and the miners at Prairie Creek or in the Hartford Valley, either before or after the institution of this suit?
A. None whatever.
Q. There has been a certain extract offered from plain-
3690 tiffs Exhibit No. 191, which purports to be the Fifth Semi-Annual Report of Fred W. Holt, District 21, from April 1, 1914, to September 30, 1914, in which is found the item to which I call your attention: "National Organizer, "$810.26." I wish you would state whether or not District 21 paid out any funds on behalf of the National Organizers in 1914 or at any other time. A. District 21?
Q. Yes. A. No, sir.
Q. Did they ever pay out any funds or monies, salaries or expenses for National Organizers? A. No, sir.
Q. Who pays for National Organizers, either their expenses or their salaries?
A. I pay them as International Secretary-Treasurer of our union.
Q. Can you, by looking at that item, offer any explanation of it? A. I feel sure that I can.
Q. What is the explanation, Mr. Green?
A. The explanation I make of this item is as follows; occasionally districts will loan their district men to perform services as International Organizers or field workers for the International Union, and in this instance District 21 loaned to the International Organizer a man to perform services in Colorado.
Q. Was a strike going on in Colorado during the year 1914? A. Yes, sir.

Q. Did District 21, and other districts, contribute men to help organize these men and carry out the strike in Colorado?

A. Yes, sir.

Q. And they loaned some of the District Organizers to the National Organization for its work in Colorado?

A. Yes. May I explain? For instance, District 12, Illinois, loaned the International Organizers six men to do
3690a work in Eastern Tennessee and Kentucky six weeks ago, during a strike in that territory.

Mr. Warrum: That is all.

The Court: Any cross-examination?

Mr. Drinker: Yes.

Cross-Examination

By Mr. Drinker:

Q. Mr. Green, at the time of this Prairie Creek strike, District 21, owed the International Organization $75,000.00, did it not?

A. I am not sure whether they owed us that amount of money at that time or not.

Q. I mean you owed them?

A. We owed District 21, but I can tell you how it came we owed them that money.

Q. Do so, if you please.

A. That money was borrowed for the purpose of paying the expenses incurred during the time the strike was on in Colorado and Eastern Ohio. In Eastern Ohio we had 14,000 men in strike fourteen months and we fed and took care of those men during that period. And in Colorado we had some four or five thousand men, and we took care of them and their families during that time.

Q. During this period from April to September 1914, the International Organization was subject to very, very great expenses, was it not, in connection with Colorado and Ohio?

A. Yes, Colorado and Eastern Ohio.

Q. And the districts from all around, that had any money, were helping out the Inaternational Organization, to run those matters that we have referred to?

A. We borrowed money like any business institution. We borrowed money from banks as well as from districts.

Q. How much did you borrow from banks?

3691 A. Well, we borrowed $25,000.00 in one instance from the First National Bank of Indianapolis and gave our note for it.

Q. How much approximately in April 1914, did you owe to all of the districts?

A. I cannot give the figures exactly, but we owed the Illinois District, District 12, about $250,000.00.

Q. Well, could you give an approximate estimate of all of it together?

Mr. Warrum: If the Court please, we feel that this is not germane,—

The Court: Make your objection.

Mr. Warrum: We object to this, the defendants and each of them separately object to this as not cross examination, and going into irrelevant and collateral matter.

The Court: The objection is sustained.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Who was the organizer that you say District 21 loaned to the National?

A. I cannot recall what his name was, Mr. Drinker, but District 21 did like other districts, loaned men to the International Organization and then they paid them for their services.

The Court: Is there anything further, gentlemen?

Mr. Drinker: That is all.

(Witness excused.)

3692 ELSIDORE MCCOLLOCH, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name to the Court and jury.
A. Elsidore McColloch.
Q. Where do you live, Mr. McColloch?
A. I live in Menongahela City, Pennsylvania.
Q. What is your business?
A. I am in the insurance business at the present time.
Q. Have you been a miner? A. Yes, sir.
Q. Did you work in the mines? A. Yes, sir.
Q. A member of the United Mine Workers of America?
A. Yes, sir.
Q. What official position, if any, did you hold in any of the districts or in the International Organization?
A. Well, I was president of the Southern field in Ohio, and president of Michigan for three years, International

Board Member for five years and International Vice-President for one year.

Q. What year was it that you were International Vice-President? A. 1909.

Q. Did you ever take part as a member of a convention, or as a delegate of the United Mine Workers of America in any joint intertsate conference of the Central Competitive Field?

A. Yes, sir, in all of them, but the 1898 convention in Chicago.

Q. Beginning with 1899 you took part in all of them up to what time? A. Up until the last one.

Q. I will ask you if you also spoke in those conventions from time to time, took part in the debates?

A. Yes, sir.

3693 Q. How long would they last on an average?

A. You mean the convention or the debates?

Q. The joint conferences.

A. Well, some of them would last as much as about three weeks.

Q. Did any of them adjourn without agreements?

A. Yes, sir.

Q. Did any of them adjourn to meet again and work out agreements? A. Generally so.

Q. How were these conferences begun with reference to the submission of any demand on the part of the miners or operators?

A. Well, they generally always,—I think invariably so,—we started by the miners presenting their demands in a written form to the operators. After the operators investigated those demands they would present counter demands and finally it would reduce itself from the floor of the convention to a committee composed of representatives from each of the four competitive states. And finally, before a settlement, it would be reduced to a sub-committee. Settlements generally always took place in sub-committee.

Q. And would that be referred back then to the convention?

A. Yes, that would be referred back to the convention for ratification.

Q. When that agreement then was entered into by the representatives of the miners and operators, what was done with it with reference to referring it back to the United Mine Workers membership?

A. Generally it was referred back to the membership for ratification.

Q. Now, following the submission of the miners demands, what took place with reference to debates and discussions?

A. In what way do you mean?

3694 Q. Well, would there be debates and discussions?

A. That would be about all there was most of the time.

Q. Were there any agreements, secret agreements or other agreements, entered into at those conferences, other than the agreements signed by the representatives of the operators and of the United Mine Workers, and submitted them to the mine workers membership?

A. No, sir, not that I ever knew of.

Q. State what, if any, understanding, agreement, or collusion existed or was entered into between the representatives of the United Mine Workers of America, and the Union Operators of the Central Competitive Field, at such joint conferences as you attended, looking to the interference with the production and commerce of non-union coal in West Virginia, and elsewhere? A. Not any that I ever knew of.

Q. Did you ever hear of any such agreement having been entered into by the United Mine Workers, their representatives and delegates in these conferences, and the union operators, or the mine workers ever having entered into any such combination, conspiracy or collusion between themselves?

A. No, sir, there was never any such to my knowledge.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:

Q. Mr. McColloch, at these joint conferences the operators' representatives were continually, were they not, urging the miners to get West Virginia organized, to protect them against the,—what they called the unfair competition of West Virginia?

A. Yes, sir. It was a good deal like the fellow that prayed for work and went hunting work and prayed he would not find it.

3695 Q. And the miners, in answer to that, stated to the operators, that they were doing the best they could, but they were up against it and they could not go far as the operators would like them to in that connection?

A. Yes, sir.

Q. That was continually the discussion, was it not?

A. Yes.

Q. And the operators would say, "Unless you can get West Virginia organized we cannot keep paying the wages you are asking us to"? A. That is true.

Mr. Drinker: That is all.

Redirect Examination

By Mr. Warrum:

Q. They did keep on working their mines, did they not, after they would use these arguments? A. Yes, sir.

Q. And when you answered Mr. Drinker that it reminded you of the man that prayed for work and went hunting for work and prayed he would not find it, I will ask you with reference to these discussions, what you know about the operators in the central competitive fields sitting in these joint conferences who owned at the same time non-union mines in West Virginia.

A. They have been accused of that repeatedly in conventions, and they never denied it.

Mr. McDonough: If the Court please, the answer was not responsive. He states "they have been accused of it".

The Court: He is stating what he knows. The objection is overruled.

To which ruling of the Court, the plaintiffs, and each of them, at the time duly excepted and still except.

Q. Were they accused in these conferences?

3696 A. They have been accused in the joint conferences, in debate, of owning operations in West Virginia, and while arguing for the organization of West Virginia and bringing up the standard of West Virginia, they were doing all they could to keep the men unorganized. It was simply a matter of debate and argument. There never was any real desire on the part of any of the operators to organize West Virginia. If they had not had that argument, they would not have known what else to have. The Sunday Creek Coal Company, the Mark Hanna interests, were supposed to own mines in West Virginia, and the Pittsburgh and Buffalo.

Q. Did they own non-union mines in West Virginia?

A. I do not know whether they are organized nor or not; at that time they were non-union.

Q. And did they have representatives sitting in these conferences making arguments?

A. They have representatives from the organized fields.

Q. And they owned mines in both fields, the union and the non-union? A. Yes.

Mr. Warrum: That is all.

Recross Examination

By Mr. Drinker:

Q. There were a number of operators that did not own such mines? A. Yes.

Q. And when those operators were accused of having mines in both places, didn't they for the most part answer that they had to go to West Virginia to make some money, that they could not make it anywhere else?

A. Yes, they made that argument.

(Witness excused.)

3697 FRANCIS FEEHAN, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Warrum:

Q. State your name to the court and jury?

A. Francis Feehan.

Q. Where do you live?

A. Castle Shannon, Pennsylvania.

Q. What is your business now?

A. At present Supervising Inspector of the Pennsylvania Department of Labor.

Q. Is that a state official position? A. Yes, sir.

Q. How long have you been in that office?

A. For about four years.

Q. What was your occupation before? A. Coal miner.

Q. Have you ever been a member or officer of the United Mine Workers of America, or any of its district organizations?

A. I was President of District No. 5 of the western part of the state of Pennsylvania for a period of over six years.

Q. Ever held any position in the International organization? A. No.

Q. What is the six years that you were President of your District? A. 1906 and 1912.

Q. Did you ever take part, as an officer of your District, or as a representative of the United Mine Workers in convention assembled, in any of the joint interstate conferences held in the central competitive field with union operators?

A. I represented District No. 5, what is known as the Western Pennsylvania District, in the joint conferences of 1906, 1908, 1910 and 1912.

Q. What was the purpose of those joint conferences?

3698 A. The purpose of the joint conference was to arrive at a settlement of a wage scale, to govern the working conditions in districts that were represented.

Q. Do you remember how long the conference of 1906 lasted?

A. I cannot recall the exact length of time, but I do know the conference broke up.

Q. Was there any agreement at that conference at all?

A. No, no agreement was reached; they were unable to reach an agreement, and as a result the interstate joint agreement, or interstate joint conference was dissolved.

Q. It was dissolved? A. Yes, sir.

Q. How were the contracts made then?

A. The contracts were negotiated by districts, or by the districts signing up with individual operators.

Q. Now, when was the joint interstate movement resumed?

A. In 1908,—three of the states in 1908, three of the four states got together in an interstate joint conference, and it was rehabilitated to that extent.

Q. Illinois being left out?

A. Illinois was not a party to the joint conference.

Q. When agreements were entered upon at these conferences, with reference to miners' demands, how were they executed with reference to them being signed by the representatives of the miners and representatives of the operators?

A. The representatives of the miners signed representing the miners. They entered into the agreement tentatively, to be later submitted to the larger conference, where all the representatives could be present, or to their respective bodies for consideration.

Q. I will ask you if it is not a fact that before 1912
3699 they were referred back to the convention, and after that time referred back by referendum vote to the members?

A. Yes, sir, that was the usual practice.

Q. Now, do you know of any agreement, besides this one, that was signed at the end of, or at the conclusion of the joint conference, and submitted to the United Mine Workers' membership, do you know of any other secret agreement, or any agreement, oral, expressed or implied, entered into between the operators and the miners?

A. There was no agreement other than that to which the representatives attached their signature. Absolutely no agreement, or understanding, that was secret, or that were not put in writing and properly signed.

Q. State what, if any, understanding, agreement or collusion existed or was entered into between the representatives of the United Mine Workers of America and the union operators of the central competitive field at such joint conferences, which you attended, looking to interference with

the production and commerce of non-union coal in West Virginia and elsewhere?

A. There was considerable discussion about the competitive relations existing between the coal operators who were represented in that conference, and those who were operating in what we call the non-union fields. Many of the operators who were urging for an extension of our organization, and ridiculing the representatives of the Mine Workers, because they could not extend its influences into these districts, owned and operated mines in those fields. We never regarded that argument as being sincere. These conferences are usually discussing the coal situation, but when we meet in conference as we frequently do, many times the coal operators are not desirous of entering into an agreement,
3700 any they are watching the market conditions very closely, and frequently it resolves itself into a discussion on almost any subject to drag the conference along until the contracts would expire, which then existed, which would automatically put into effect a suspension of work, and then of course the operators had created the condition that they wanted, and the market prices would go up, with the result that they would later enter into an agreement That was done quite frequently, and we always knew that was what they wanted done.

Q. Did these conferences adjourn from time to time to meet later?

A. Quite frequently they adjourned to meet later because the conditions at that time were not favorable, as the operators would say, to entering into an agreement.

Q. Now, you have not answered the question that I directed to you in this question: State what, if any, understanding, agreement or collusion existed or was entered into between the representatives of the United Mine Workers of America, and the union operators of the central competitive field, at such joint conferences as you attended, looking to the interference with the production and commerce of non-union coal in West Virginia or elsewhere?

A. There was no agreement.

Q. Or no understanding?

A. No, no understanding, either.

Q. Something has been said about coal companies having representatives in the joint conference, and operating non-union mines in West Virginia, and calling your attention to that situation, do you know of any coal companies meeting in joint conference in the central competitive field, and operating with union labor there, and operating with non-union labor in Western Pennsylvania?

A. Yes, sir.

3701 Q. Name some of them.

A. Mr. John H. Jones of the Pittsburgh & B[illegible]do Company was usually,—he attended the conference repr[illegible]enting operators, and he owned and operated mines in the non-union coal fields of West Virginia. The same is true of Michael Gallagher of Ohio.

Q. Who did he represent?

A. M. A. Hanna Coal Company.

Q. The Mark Hanna Coal Company?

A. Yes, sir, and its mines in the Pittsburgh District and in West Virginia as well as Ohio.

Q. Do you know of any others?

A. I am not so certain about them, but we all thought there was.

Q. Did you ever meet Mr. Moore?

A. Yes, sir, I know Mr. Moore.

J. Charley Moore? A. Yes, sir.

Q. I will ask you if he had non-union properties in West Virginia?

A. It was stated in his presence that he had interests there, and he never refuted the statement; that is all I know about Mr. Moore's interest.

Q. Now, with reference to your statement that the union operators would sometimes prolong the discussion too long beyond the period when the contract ran out followed by an automatic suspension of work, raising the coal market, I will ask you whether or not that situation has been changed by the United Mine Workers of America, and what time it was changed and what its policy is now with reference to a continuation of past contracts?

A. The public suffered so much by that practice that the Mine Workers' organization, through International President John P. White, changed the policy of the organization to eliminate those suspensions of work, and provided

3702 for a continuation of work as long as negtiation were going on.

Q. When did that happen, do you know?

A. That happened after the 1912 joint conference.

Mr. Warrum: That is all.

Cross-Examination

By Mr. Drinker:

Q. Mr. Feehan, do you mean to say that the United Mine Workers of America are solely responsible for having

that clause put in that agreement, and that the operators did not want it in there to avoid a suspension of work?

A. What clause have you reference to?

Q. The clause providing there would be no suspension on the 1st of April, but that they would go on working until an agreement was reached? Do you mean to say that the miners were solely responsible for that, and that the operators did not want it?

A. No, they could not have any agreement by themselves, the agreement had to be mutual. The miners' representatives, however, were desirous of having that.

Q. Always? A. Yes.

Q. You mean to say that the miners' organization in these debates, the representatives of the miners, were continually urging that, and that the operators refused it before 1912?

A. No, not continually urging it, not before 1912.

Q. Is it not a fact that the operators always wanted to have the suspensions obviated, and go on working, and the miners only gave up to it after some time, gave up their right to strike after constant pressure by the operators and public opinion? A. No, it not a fact.

Q. What is the fact?

A. It is a fact that the operators were desirous of
3703 suspension of work at times. That is the condition that prevailed, they were desirous of having a suspension at times.

Q. What year can you state when the operators opposed having a clause in the contract providing that there would be no suspension, but that they should go on, and what operators can you tell me that ever urged that in any joint conference, from the beginning until now?

A. I said the policy of our organization changed.

Q. That is not what I asked you, read the question, please?

(Question read by official stenographer as follows:

"Q. What year can you state where the operators opposed having a clause in the contract providing that there would be no suspension but that they would go on, and what operator ever urged it?")

A. I have not said, in making the statement, that they opposed a clause of that kind, but I said they welcomed a suspension of work at the expiration of the contract.

Q. What operator can you name in any of these joint conferences opposing the clause in the contract against the suspension of work on the 1st of April? What operator in what conference from 1898 to the present date?

A. I am not making a statement of that kind, but I say they welcomed a suspension of work at the expiration of certain contracts.

Q. You just guessed that they were glad of it?

A. I know that they welcomed a suspension of work, because it had a certain effect upon the market conditions, and the price of coal went up, and when that market condition was satisfactory then the operators asked for a renewal of the conference, or came at the request of the miners, and we
3704 entered into an agreement.

Q. You mean to say that the operators wanted to have their mines shut down, and their overhead expense going on, and them sitting there not bringing out any coal at any time?

A I am certain that they did.

Q. What was to prevent them shutting their mines down whether they watned to, without reference to you or your agreements?

A. [They] was nothing to prevent them, and they did that quite frequently.

Q. Why did they have to get it by reason of this suspension clause? Why could they not shut down in June or July or any other time?

A. There was nothing to prevent them, and they did whenever they desired.

Q. Were you in the 1898 conference?

A. No, I was a member of the organization, but not a delegate to that convention, or attended that conference.

Q. Now, at these joint conferences was it not a fact that the operators were continually urging the miners to get West Virginia organized in order to meet the competition, and that the miners were continually saying, we are doing the best we can and we could do a lot better if you would turn in and help us?

A. Many times when they would raise that argument the miners' representatives would ask them why they did not withdraw their objections and allow the organization to be introduced at the mines they owned and operated, and while there is a record there showing those matters, we discussed, reference made tc the competition from numerous other parts of Pennsylvania and West Virginia, yet the operators would not consent to the organization being established at their mines.

Q. You say there is a record there, what do you mean
3705 by the record?

A. Several times the representatives of the miners called their attention to that, that the reason the organizaion

was not established in West Virginia was because of the opposition from the operators, and those who owned the mines in the central competitive field.

Q. When you refer to the fact that there was a record, where are the records? A. I said,—

Q. (interrupting). What does the record consist of?

A. I said it is a matter of record, the representatives of the miners.

Q. You mean in these books (handing witness a book)?

A. Yes, sir.

Q. These books like the one I show you?

A. Yes, sir, interstate joint,—

Q. (interrupting). This is the record?

A. Yes, sir, that is the record.

Q. (Showing the witness plaintiffs' Exhibit 200.) Now, coming back to the question I asked you a moment ago, that I dont' think you have answered yet, is it not a fact that continually in these conferences the operators were urging the miners to organize West Virginia, and all these competitive non-union states, in order to bring up the cost, and to help out the operators in the central competitive field, and the miners were continually saying, we are doing the best we can, and we would do a lot better if you would turn in and help us? Is that not the gist of things?

A. Not that way. The operators frequently referred to the competition from the other fields, and they expressed themselves as being anxious to have the non-union coal miners in West Virginia organized, for the purpose as they stated of establishing uniform prices and conditions for the

3706 employes in the mining industry.

Q. Did they not continually tell the miners that they had agreed to do that, and they had not fulfilled their agreement, and the miners said they were doing the best they could, and if you will help us we can do better?

A. Quite frequently they complained of the conditions in the non-union mines of West Virginia, and it is true that an operator would complain about the prices that the organization sought to obtain at his mine, claiming that he should have a reduction in the price there.

Q. And specially he complained of it in the non-union mines, that the non-union mines were operated cheaper than his? A. In the union fields, too.

Q. And did they not complain more about the non-union fields than the union fields? A. Yes, sir, I believe they did.

Q. And did not the operators continually tell the miners that they agreed to bring about West Virginia, and you have

not done it, and didn't the miners say that we are doing the best we can to bring about the change in West Virginia, and if you will help us instead of hampering us we can do it?

A. The miners at all times stated in these conferences and to the public that they were desirous of extending the influence of their organization to all the mines in the United States, including Canada? That is the well known policy of the International Union, and they made those statements in joint conferences and other places also.

Q. I have asked you the same question three times.

A. I will try to answer it, I am not tryingto evade answering your questions at all.

Q. I dont' think you understand me. I want to ask
3707 you once more if it is not a fact that at these conferences the miners were continually,—or the operators were continually telling the miners that, you agreed to organize West Virginia, and you have not done it, and the miners were continually saying, we are doing the best we can to organize West Virginia, we are doing the best we can, and if you would turn in and help us we could do it a whole lot better?

A. It was said in the manner I have answered your question, by saying, yes, they frequently made the statement that they were desirous of organizing West Virginia.

Q. And the operators frequently made the statement, substantially as I have given it in the question?

A. Yes, sir, the operators complained of competitive conditions there.

Q. Now, with the dozens and dozens of operators at these conferences, there were only a very few that had mines in West Virginia, comparatively? What per cent of all the operators that you knew in the central competitive field do you think, or suspect, or have knowledge of, that had mines in West Virginia.

A. I cannot tell about how many, but quite a large number.

Q. Five per cent of them?

A. Yes, sir, I would say more than five per cent had interests in West Virginia.

Q. Name the operators that were represented in these joint conferences, from first to last?

A. Oh, I couldn't tell; they run into the hundreds.

Q. Three hundred, say?

A. I suppose it run over three hundred.

Q. Five hundred?

A. Between three and five hundred, probably.

Q. Now, name the operators that you know had any
3708 interest in West Virginia, out of these five hundred?

A. Well, I don't know all the operators, but I was told that a great many operators had interests in coal lands there, and in development in West Virginia.

Q. I have no doubt that you were told that.

A. This I do know, that the M. A. Hanna interests who operated in our districts had interests developed and were operating in West Virginia. I also know that the Jones interests, the Pittsburgh & Buffalo Coal Company, also were operating there. There are two I know of personally.

Q. Name the rest of them?

A. I couldn't tell you; if I name any other, it would only be on hearsay.

Q. Just talk among you men on the miners' side of the house?

A. It was merely rumored, and the report was circulated generally by both coal men and the miners represented, that they did have interests in West Virginia

Q. That who had? A. The other companies.

Q. Which other companies?

A. I was told that the Kuhns did.

Q. Who told you that Kuhns did, what, a miner or operator? A. A miner told me principally about them.

Mr. Drinker: That is all.

Redirect Examination

By Mr. Warrum:

Q. Were these charges made before the operators, in the presence of the operators, during the course of debate?

A. What charges?

Q. That a number of them had interests in other fields?

A. Charges were made quite frequently in interstate joint conferences that they did have interests in West Virginia.

Q. Was not this the argument of the miners, that they
3709 didn't want them to help organize West Virginia, but wanted them to withdraw their opposition to the organization so that they could organize them?

A. The argument was made by the miners that they could make more progress in organizing West Virginia if the opposition was withdrawn, and that the operators were not sincere.

Q. And all this debate occurred over the question of the increase of scale, the mining rate, or some other question involved in the miners' demands, is that correct?

A. Yes, sir, all this discussion.

Mr. Warrum: That is all.

Witness excused.)

3710 JOHN S. CAMERON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State your name. A. John S. Cameron.
Q. Where do you live, Mr. Cameron?
A. McAlester, Oklahoma.
Q. What is your occupation? A. In the mining business.
Q. Operating a mine or working in the mine?
A. Coal operator.
Q. Coal operator? A. Yes, sir.
Q. How long have you been connected with the mining business? A. Since 1890.
Q. Since 1890? A. Yes, sir.
Q. Were you ever at any time employed by the Bache-Denman interests in Arkansas? A. I was.
Q. In what capacity?
A. Superintendent of their Arkansas properties.
Q. Located at what point?
A. Located at Midland and Prairie Creek and Arkoal.
Q. When did you accept employment in those companies?
A. On the 15th day of December, 1913.
Q. December 15th, 1913? A. Yes, sir.
Q. How long did you remain with them?
A. Until the 6th of June, the following year, 1914.
Q. 1914. Did you change the system of working the mines, I mean by that, did you change from the union to the non-union system of operating the mines while you were superintendent? A. Yes, sir.

Q. How long before you made the change did you learn
3711 that it was contemplated that you were to do that?
A. About two weeks, something like two weeks.
Q. About two weeks? A. Yes, sir.
Q. Did you write Franklin Bache a letter setting forth the advantages of the non-union operation, just before you went on the non-union basis? A. I did.
Q. Is this the letter, Mr. Cameron?

The Court: Handing the witness that exhibit?

Mr. Covington: What is this exhibit?

The Stenographer: Exhibit 38.

Q. Plaintiffs Exhibit 38,—it appears that you didn't sign it. A. No, sir.

Q. Who dictated that letter?

A. That letter was practically dictated by,—the substance of the letter was dictated to me by Mr. Bache.

Q. Where? A. In the Goldman Hotel.

Q. Did you write it in the Goldman Hotel?

A. No, sir, I wrote that in the Main Hotel, from notes I made.

Q. Why did you come down to the Main Hotel to write it?

A. At the suggestion of Mr. Bache.

Q. What did he say, if anything, about getting that letter as part of his plans?

A. He told me,—I had only known a few hours prior to the time that letter was written that it was Mr. Bache's determination to go on a non-union basis at his mines in Arkansas, and Mr. Bache outlined his policy to me that Sunday afternoon, March 22nd, and we went all over the matter that was contained in that letter, and be told me that he had to have a letter, that he wanted a letter of that kind to send to some of the people that were connected with him in the business in the east.

3712 Q. You left the mines, or the employ of these companies, on the first of June, you say?

A. On the 6th day of June.

Q. I will ask you if at the time you left that company, if they had any coal diggers at the mine, people that dug coal?

A. Not that I know of.

Q. You had guards, and things of that kind, detectives?

A. We had guards, and a few that claimed to be coal miners, but I didn't know whether they were or not, because we mined no coal by them when I was there.

Mr. Covington: That is all.

Cross-Examination

By Mr. McDonough:

Q. Mr. Cameron, did you mine any coal up to the 6th of April?

A. From the time we went on a non-union basis?

Q. Yes.

A. There was some coal hoisted, but it was mined by men that had been in the employ of the company prior to the time the mine went on a non-union basis. There was no coal hoisted that was mined by men that went in the employ of the company after that.

Q. What was your statement as to when you were employed by the Bache-Denman Company?

A. December 15, 1913.

Q. You remained in that company's employ until June 6th?

A. Yes, sir.

Q. What was your statement as to the first information that you had that Mr. Bache desired to go on non-union conditions?

A. The first information I had was on Saturday night, about 11:00 o'clock, March 21, 1914, the night prior to the time this letter was written.

Q. Was that the night before this letter was written?

3713 A. Yes, sir.

Q. This was the day before?

A. That was the first direct information I had from Mr. Bache. I had an intimation that this was going to happen perhaps two or three days before that, in a letter from Mr. Finley.

Q. Prior to that time, Mr. Cameron, what experience had you had in the Arkansas and Oklahoma coal fields?

A. I had considerable experience, practically all my experience has been in the Oklahoma coal fields.

Q. That has been for how many years?

A. Since 1890.

Q. Since when? A. 1890.

Q. You had had then something over 20 years experience in the Oklahoma coal fields?

A. About twenty-three of twenty-four years.

Q. The conditions in the Oklahoma coal field, especially in the Eastern Oklahoma coal field, from McAlester eastward, are similar to the conditions in the Hartford Valley field?

A. Something similar, the coal is different, but generally they are something similar.

Q. The coal is connected in the two fields, running continually on the outcrop in the two fields?

A. Yes, sir, the Arkansas field is a continuation of the Oklahoma field.

Q. You then were familiar with true conditions of the operation and expense of [operatoing]coal mining plants in Arkansas and Oklahoma at the time this letter was written?

A. Yes, sir, I was.

Q. The statements made in that letter expressed the truth, did they not?

A. I had not had time to give the matter any consideration at all, Mr. McDonough.

3714 Q. So far as your information and experience had gone, the statements therein are true, are they not?

A. There are some of the statements therein that are true, undoubtedly, at that time. It was a big question, and I had only a few hours notice of it, and I had not the time to give the matter consideration. In other words, that letter was a mental impossibility for me to have written it, from the time I knew that Mr. Bache intended to go on the non-union operation.

Q. He stated that he had other people interested with him, and he wanted the true conditions to submit to the other people interested with him in the east?

A. After he had gone all over the matter, as to his plans.

Q. Did you not in my office, a few days ago, state that you did not want to testify in the case, by reason of the fact that you were employing union men, and they might start out at war with you, if you testified in the case?

A. Yes, sir, I said this, that if my letter was not properly interpreted and explained, that it would put me in a bad light, that it would show I was not in good faith employing union labor; that was the impression I intended to create, but if that letter as testified to on the stand by Mr. Bache did put me in a bad light, and show that I was not in good faith in operating with union labor.

Q. You are operating with union labor now?

A. Yes, sir.

Q. And you were in fear, if you did not go on the stand, that union labor would turn against you?

A. Unless this letter was properly explained, and that it did express Mr. Bache's sentiments at that time.

Q. You did desire an opportunity to explain, so that
3715 union labor might understand your position, fearing that union labor might hurt you?

A. I told you that I would not go on the stand and say that letter was written of my own initiative, and if I did go on the stand I would testify that letter was virtually dictated by Mr. Bache, and he requested me to sign it as superintendent of his properties.

Q. Did you not state to me in my office, in the presence of myself and several other men in the office, that you would not tell me that night what your answer would be, that you were making money now and employing union labor, and that you could not afford to antagonize union labor, and would have to give you until the next morning as to what answer you would make?

A. Yes, sir, that is true, but wait a minute.

Q. Did you say that?

A. Yes, sir, but I also had told you that it was three and a half years ago since that letter was written, and I wanted to

get the facts fresh in my mind, as near as I could, and that is why I asked you to wait until the next morning, and then I would tell you what I would testify to, and I did.

Q. You read the letter there that night? A. Yes, sir.

Q. And you had seen it before that?

A. Yes, sir, I had seen a copy of it before that.

Q. Had you had trouble with union conditions in the operation of these mines, after you became superintendent in December, up to the latter part of March this year?

A. We had labor disputes.

Q. Did the union miners go out in violation of their contract during that time?

3716 A. We never lost an hour while I was there.

Mr. Covington: I object to this as not cross-examination.

Mr. McDonough: We withdraw it.

Q. Did you not state in this conversation to which I called your attention awhile ago, that there were certain statements in that letter that you would never have made if you had realized that it would ever get to the union?

A. And used in the way it was.

Q. You said that?

A. If I thought it would be used in the way it was I certainly would not have written that letter, because it was not my letter, it was dictated to me by Mr. Bache.

Q. You understood that Mr. Bache was to use the letter with eastern men interested in his companies?

A. Yes, sir, but over his own signature.

Q. Do you know Mr. Tom King?

A. Yes, sir, very well.

Q. He is a member of the union, an officer of the union?

A. I think so.

Q. He has been here attending this trial, sitting just behind Mr. Covington there now?

A. Yes, sir, that is the gentlemen.

Q. Been here all the time, as far as you know?

A. I don't know.

Q. Did he not come to you before you talked to us, and have a conversation with you as to what your evidence would be, and ask you something about that letter?

A. He certainly did not.

Q. Did he send anyone to you?

A. Not to my knowledge, I met a party when I came out of Mr. Bache's office.

Q. Who was that man? A. Mr. Parmlee.
3717 Q. Who is he?
A. A powder man, that sells powder.
Q. Did he come to you as a representative of King?
A. The only thing that Parmlee said was "I saw Tom King across the street a minute ago and he was looking for you".
Q. Did you see Mr. King then?
A. I saw him late that evening.
Q. Did you have a conversation with him about your evidence in this case?
A. No, sir, that was not talked at all. He shook hands with me and asked how I was getting along, and I incidentally remarked about the report of the Bache-Denman case that appeared in the Times-Record for Sunday October 28, and that was all that was said, and Mr. King made no comment on it whatever.
Q. You did not discuss your letter with Mr. King?
A. No, sir, not at that time.
Q. Did you discuss it with any other members of the union?
A. Not at that time, no.
Q. At any time since this trial begun?
A. I may have mentioned it, I don't remember. I have talked about it I guess to a great many people.
Q. When did you mention it, and to whom?
A. I talked about it to you, and to Mr. Covington, and to Mr. Reed.
Q. Who? A. John Reed. And Press Allen,—
Q. Who is John Reed? A. A coal operator of McAlester.
Q. You didn't understand the question, I am asking you about the officers of the union, since this trial begun, were there any of them discussed with you the question of your evidence in this case?
A. I talked to Mose Cleavenger, in Krebs one evening.
Q. With whom did you talk there?
A. With Mose SCleavenger I said.
3718 Q. He is a member of the union? A. I understand so.
Q. Was that after this trial commenced?
A. Yes, sir.
Q. And before you were called as a witness?
A. Yes, sir, before I was called as a witness.
Q. Before you were here before?
A. No, that was after my conversation with you, Mr. McDonough, and Mr. Hull and Mr. Drinker.
Q. Mr. Cameron, were you some time this spring in the office of the receivers of this case? A. I think so.

Q. And did you not dictate, in the presence of Mr. Hull, the substance of the statement which I ask you to look over. I will ask you to read that, your name appears there.

A. Ask me that question again.

Q. And did you not dictate in the presence of Mr. Hull, the substance of the statement which I ask you to look over?

A. In the presence of Mr. Hull?

Q. Or in the presence of anybody in the office of Mr. Finley, one of the receivers in this case, did you not dictate that statement showing the condition of coal mining in 1913 and 1914, or at the time referred to in the statement?

A. This was dictated to me after suggestions by Mr. Bache.

Q. By Mr. Bache?

A. After going over the matter thoroughly with Mr. Bache.

Q. What is your answer to the question?

A. That was partially dictated by me; I don't think all of it was dictated by me, but part of it dictated by me after being in [confernece] with Mr. Bache for a long time.

Q. Were those your views as expressed in that statement?

A. Not all of them, no, sir.

Q. Were the majority of the views expressed therein?

3719 A. I told Mr. Bache that I would testify to my views when I got on the stand, that there were a great many things in there, in fact Mr. Bache told me to write a great many things in there to refresh his memory on certain things, and lots of the thoughts were Mr. Bache's thoughts, that he suggested to me to write in there so that his memory might be refreshed from time to time.

Q. Were the statements dictated by you in this statement true?

A. Some of them I don't know whether they were true or not true.

Q. Referring to all of those that you do know as to whether they were true or not true, were they true, those dictated by you?

A. The written matter that we have up right now is a list of disputes that occurred at the mines of the Bache-Denman Coal Companies in Arkansas, and some of that matter is true, and some I don't know whether is true or not. Some of the ideas in there I don't agree with.

Q. Did you make any false statements in the statement dictated by you?

A. Not to my knowledge. I might differ in judgment as to what is written in there, but some of those views and some of the written matter in there is strictly and purely Mr. Bache's idea, and written entirely at his suggestion.

Redirect Examination

By Mr. Covington:

Q. Mr. Cameron, when they ascertained that Bache dictated this letter, you were discharged?

A. Mr. McDonough told me I could go home on the first train, I think that was his language.

Mr. Covington: That is all.

(Witness excused.)

3720 (A recess was there taken of ten minutes.)

JOHN CAMERON, was recalled as a witness in behalf of the defendants, having been previously sworn, testified further as follows:

Recross Examination

By Mr. McDonough:

Q. Mr. Cameron, the statement to which I referred in the cross-examination is Plaintiffs Exhibit No. 219, beginning on page 1008 and down to and including page 1027. That is the statement about which I asked you whether or not you did not dicate it in Mr. Finley's office.

A. Yes, sir, part of it I dictated.

Q. Who wrote it down? Do you know?

A. I don't remember.

Mr. McDonough: I would like to ask Mr. Cameron one more question.

The Court: Very well.

Q. In your statment to us on the the afternoon when this matter was first called to your attention did you state to us that there was nothing in this matter by way of implication against Mr. Bache? Did you state that to us that night?

A. That there was what?

Q. That there was nothing of any implication of anything wrong against Mr. Bache; did you state that to us on that night, on which you told us you could not tell us what your answer would be until the next morning?

A. I believe Mr. Bache was in good faith in everything he told me.

Mr. McDonough: That is all.

(Witness excused.)

3721 W. H. COULTER, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State you name. A. W. H ulter.

Q. Where do you live, Mr. Coulter?

A. Fort Smith, Arkansas.

Q. What is your occupation?

A. I am a brakeman on the Midland Valley.

Q. How long have you been in the railroad busine ?

A. I have been with Midland Valley for twelve years.

Q. Were you working for the Midland Valley in 1914?

A. Yes, sir.

Q. In what capacity? A. Brakeman.

Q. On what train?

A. On what they called the "polly" that runs between Hartford and Fort Smith, it made a round trip a day.

Q. Was that a mixed train of passengers and freight?

A. Yes, sir.

Q. Were you on that run during the months of April, May June and July of 1914?

A. Yes, sir,—well, I was off a few days in the month of April and off also in the month of July.

Q. What time of July?

A. It was along about the middle of July I was off on account of a death in my wife's family.

Q. During this period in April, I believe it was, did you have on the train on which you were then working some parties on their way to Prairie Creek?

A. Yes, sir, we had on the train at several times parties from here to Prairie Creek.

Q. Do you remember of one man being cursed by Slankard on the train?

A. Yes, sir, I remember of hearing of it, but I did
3722 not see it.

Q. You did not see that? A. No, sir.

Q. Were you present at Prairie Creek when the sack of chops was alleged to have been cut by Sandy Robinson?

A. Yes, sir.

Q. Tell how that was.

A. Well, we had about half a carload of stuff for Prairie Creek that evening, chops, bacon and household goods and pretty near everything you could think of. The freight and the chops were taken off and piled up off at one side and there was some big boxes unloaded containing goods of some kind, and a lot of household goods, and they let the

boxes on the ground and one of them was rolled over on the sack of chops where the sack of chops had rolled out on to the ground.

Q. Do you know Sandy Robinson? A. Yes, sir.

Q. Did he cut the sack of chops?

A. No, sir, he did not.

Q. Who else was present that you recall? Was the conductor present?

A. Yes, sir, the conductor was on the train.

Q. Who was the conductor on the train?

A. Mr. Harrison was conductor at that time.

Q. Were you in the train when some difficulty is alleged to have occurred between Clint Burris and some parties in there, and it is claimed they held a base ball bat over the head of a fellow by the name of Boraski?

A. No, I was out of the car at No. 4 mine at the road crossing unloading freight at that time.

Q. Were you in the coach where Burris and Robinson and Manick and these other parties were that evening, from Midland over to Prairie Creek?

A. Yes, sir, I came through the car.

Q. Tell whether either Burris or Manick or Robinson abused or cursed those fellows, or said anything to
3723 them.

A. No, sir, not while I was in there. I did not hear them say a word to them.

Q. How far is it from Midland over to Prairie Creek?

A. Three miles.

Q. How much of the time were you in the coach, that you recall? I believe you testified in this case once before.

A. Yes, sir. I was not in there very long because I had the freight to unload and I had to go to the head of the car to get the bills to check the freight off and of course I did not go in there when they stopped because I was not at the station.

Q. You had ladies on that train did you?

A. Yes, sir.

Q. I will ask you when you reached the station of Prairie Creek if there was anyone out there with guns?

A. Yes, sir.

Q. What were they saying?

A. There was several standing around there with Winchesters.

Q. Did you know who they were?

A. No, sir, I don't know any of their names.

Q. Have you seen any of them since?

A. I don't whether I have or not, if I did I didn't know them.

Q. What were they doing there?

A. Well, they generally came up there in the wagon that came up after the goods that was shipped there to the men there at the mines. There were three or four of them would ride up in the wagon and stand around on the platform with Winchesters in their hands.

Q. On this particular occasion were they using any kind of abusive language?

A. Yes, they were cursing and going on outside on the platform.

Q. At this same station, at the same time, did you
3724 see any one draw a gun on a man there?

Yes, sir.

Q. Now, who was that, do you know?

A. Well, he was one of the guards; he claimed to be a guard. He had a winchester and he threw it on Sandy Robinson?

Q. He threw it on Sandy Robinson? A. Yes.

Q. What was Sandy doing at the time that you noticed?

A. He was standing kind of between that little building that is used for a room in time of rain. It is not a depot.

Q. It is just a shed?

A. Yes, sir, just a shed. Sandy was standing back there and there was a lot of little boys around there talking and jeering and going on and this fellow grabbed his gun and said, "You son-of-a-bitch, I will take a shot at you". He said, that to Sandy, and Sandy said, "Shoot you-son-of-a-bitch, you haven't got nerve enough to shoot".

Mr. Covington: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. You were a witness in the contempt proceedings, Mr. Coulter? A. Yes, I was a witness here.

Q. In this court? A. Yes, sir.

Q. And you testified the same then that you did now?

A. Yes, sir, I think so, the best I can remember.

Q. You knew Sandy Robinson, did you? A. Yes.

Q. How long have you known him?

A. I have known Sandy Robinson ever since he was a little boy.

Q. You and he were friends?

A. Not any more friends than any body else with him.

Q. What is your age? A. I am 50 years old.

Q. Did you know Clint Burris? A. Yes.
Q. About what aged man was he?
A. I don't know his age, I suppose he is 35 or 40
3725 years old.
Q. You saw them with base ball bats, did you?
A. Yes, sir, I seen them.
Q. When was that?
A. I don't know what date it was, I don't remember the date.
Q. About what time was it?
A. It was some time in July, I think it was.
Q. Of 1914?
A. Yes, sir, somewhere along there.
Q. That was at Midland?
A. Yes, they got on the train at Midland. They were at Huntington or somewhere playing ball.
Q. They got on at Huntington, did they?
A. No, at Midland.
Q. And where did they get off?
A. At Prairie Creek.
Q. They only traveled two or three miles?
A. Three miles is what it is called.
Q. You heard no conversation between them and anybody that was on the train? A. No, sir.
Q. That you now remember? A. No, sir.
Q. You were not in the car they were in all of the time they were going over there? A. Yes, sir.
Q. Do you know whether they had been over to Mansfield or Huntington?
A. I don't know where they had been.
Q. Where did Manick get on the train?
A. At the same place they did, I think.
Q. Where? A. At Midland, as far as I know.
Q. Where did he get off?
A. He got off at Prairie Creek.
Q. Was there any profane language used there at that time, at the time they had their bats, to your knowledge, in your presence or hearing?
A. Whereabouts, up at the station?
Q. On the train or at at the station?
A. There was some used down at No. 4 Mine where
3726 we stopped at the crossing to unload the freight.
Q. At Prairie Creek?
A. This side of Prairie Creek.
Q. Was that the day the freight was unloaded?
A. That is the day some of it was unloaded.
Q. The day they had ball bats?

A. Yes, sir, I think that is the day they unloaded the freight at No. 4 crossing.

Q. That is the chops you spoke about?

A. No, they were unloading at the station after that or before, I have forgot which.

Q. Was Sandy Robinson there when you unloaded the chops? A. Yes, sir, at the station.

Q. After you unloaded and got through with your work, you went on?

A. Yes, sir, we did not stay there.

Q. Part of the time you were there you were in the back of the car unloading freight?

A. Yes, part of the time, and part of the time on the platform.

Q. You were busily engaged in your duties there practically all of the time you were there? A. Yes.

Q. And soon as you got through with those duties the train went on?

A. Yes, sir, as soon as I got through unloading freight.

Q. Who was that conductor? A. Mr. Harrison.

Q. Is he still in the employe of the company?

A. Yes, sir.

Q. Did you know a United States Marshal by the name of Schell? A. No, sir.

Q. Was there a United States Marshal along there?

A. I could not tell you.

Q. You do not remember of seeing one at all?

A. I seen men with guns, but I don't know whether they were marshals or not, or what their names was.

3727 Mr. McDonough: That is all.

Mr. Covington: Stand aside, that is all.

(Witness excused.)

3728 P. L. HARRISON, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct-Examination

By Mr. Covington:

Q. State your name. A. P. L. Harrison.

Q. Where do you live, Mr. Harrison?

A. In Muskogee, Oklahoma.

Q. What is your occupation?

A. I am conductor on the Midland Valley.

Q. How long have you been conductor on the Midland Valley?

A. Since 1908.

Q. How long have you resided in Muskogee?

A. Well, approximately all of the time with the exception of about two and one-half years I lived here and at Hartford.

Q. What was your run in 1914, in the months of April, May, June and July?

A. I had the run known as the "polly" out of Hartford in the morning about 6:30 and came here at 9:50; out in the afternoon at 4:10 and that usually tied us up about 7:00 in the evening at Hartford.

Q. Do you remember a man being on your train out of here one afternoon on his way to Prairie Creek being searched?

A. I do, sir.

Q. Were you in the train at the time, Mr. Harrison, do you remember? A. I was.

Q. What was his condition with reference to being drunk?

A. He was drinking.

Q. Was he using any bad language or cursing or anything of that kind?

A. Yes, sir. I called his attention two or three times to the fact that he could not use that kind of language, that there were ladies in the car. This was a partitioned car, and
3729 the overhead partition lacked about that much of going to the top of the car, and it was open at the top. With just an ordinary swinging door in the aisle.

Q. On this same trip,—I will ask you first if you know whether he had a gun on him.

A. I don't know that he had a gun, no, sir. I saw him walking, one particular man, walking up and down the aisle talking boisterously and using profane language and I told him there were ladies in the rear and that he could not use that kind of language, that he would have to cut it out. I could see something in his pocket, his coat stuck up, but I could not tell whether it was a bottle or what it was.

Q. Were there other parties on there on their way to Prairie Creek?

A. Yes, sir, there was quite a few, sir.

Q. Do you know who they were?

A. No, sir, there was a gentleman came to me on this particular occasion at the depot with quite a few tickets in his hand and called me off to one side and said, "I have got a bunch of men going to No. 4 Mine and I want you to stop at No. 4 Mine to let those men off." I told him I had gotten into trouble once with my superintendent for letting a woman with some children off at No. 7 Mine,—with my superintendent S. H. Barnes, and he told me if I didn't know where the stations were on the time card I had better study up on them and not

stop between the stations to let anyone off, or he would send a man down here that would stop at the proper places.

Q. Did you get an order, after this conversation, to stop there?

A. I told him the only way I would stop was on orders from my superintendent, and I got an order at Midland to stop there and I stopped.

3730 Q. Do you remember about how many rode on those tickets?

A. I think eight or ten or something like that. I don't remember exactly. There were several.

Q. Did the man that was searched,—the man you say was drinking and cursing on the train, did he get off at this place you stopped at No. 4?

A. He did, sir.

Q. Did the others get off there?

A. Some did and some did not.

Q. Do you know Clint Burris and John Manick?

A. I do, sir.

Q. And do you know Sandy Robinson? A. I do, sir.

Q. Did you see them that day? A. Yes.

Q. Did they get on your train? A. Yes.

Q. At what point? A. At Midland.

Q. Where did they go? A. They went to Prairie Creek.

Q. They live at Prairie Creek, do they? A. Yes, sir.

Q. Well, on the way from Midland over to Prairie Creek state whether John Manick, Clint Burris or Sandy Robinson abused, threatened, cursed or held a base ball bat over any of those fellows? Tell the jury what was done if they did.

A. They got on at Midland, several of them. They had base ball bats and set them right up against the stove in the corner of the car. That is, there were some base ball bats there. I don't know whether they were all there or not, but several were placed up in the corner. And they walked into the back end of the partitioned car and sat down against this wall or partition. I stayed in the car all of the time for fear that this same party who had been drinking would say something or cause a row or contention, and to keep down trouble. There was not a word spoken by any man of that base ball crowd only among themselves, that I heard and I was in the car from the time we left Midland until we got to

3731 Prairie Creek 4 Mine.

Q. When you got to Prairie Creek No. 4, I will ask you if there was anyone with guns to meet the train?

A. Yes, sir, there were several there with Winchester rifles and two or three wagons, several men on the outside of

the car and near where we stopped to unload the freight at the crossing, just over the bridge there.

Q. I will ask you if any of those parties that had guns rushed into the train with them.

A. Yes, they started into the train.

Q. And turned back? A. Yes, sir.

Q. What was said then, if anything, by someone wanting off they would not let off?

A. One man that seemed to be spokesman, who I would know, but I don't remember his name, got up on the platform and started in with a gun, and I stopped him and asked him where he was going and he said he was going in to get some men off he had on the train and I said, "Point them out to me and I will get them off for you."

Q. Did he point out anyone?

A. He got off of the car and when I went in I said, "This is No. 4 Mine, if anybody wants to get off if they will come with me I will see that they get off without molestation."

Q. Were they being molested at the time? A. No, sir.

Q. What was said?

A. I called to this man and said, "Get up in the car and point out the men you say are your men and I will see that they are unloaded or get off here, and I will see they are not molested while on the company's property." And he got off on the ground and I stayed in the car and he pointed to some light headed fellow whose name I don't know and I said, "Is this one?" And he said, "Yes." And I said to

3732 him, "Your fare is paid to Prairie Creek. This is No. 4 Mine and if you want to get off I will see that you get off without being molested," and he said, "Hell no, I am going to Hartford." And I said, "Your fare is only paid to Prairie Creek" and he pulled out some money and paid his fare. And Clint Burris said, "Conductor, if he hasn't got money to pay his fare, I will pay it", and I said, "You sit down, his fare is paid."

3733 Q. Burris was back then sitting where he had been all the time?

A. Yes, he was sitting back against the partition.

Q. Now, Mr. Harrison, after you reached Prairie Creek, was it on this same trip that some trouble arose there about some chops being cut?

A. No, sir, I think it was a day or two later than that. I won't say positively, but I am quite sure it was a day or two later, a few days later.

Q. State to the jury if Sandy Robinson cut the chops there on that occasion? A. He did not, sir.

Q. Tell the jury what occurred?

A. Well, sir, we had a lot of freight to unload, and the freight was in the front of the car right next to the baggage to the car, right next to the coaches, and Mr. Coulter usually went over and got the bills and brought them out and gave them to me and I would check the freight off. We had a brakeman inside of the car by the name of Kendall that brought the freight to the door and the hind brakeman would take it off and put it on the depot platform. Coulter was working on the ground and I was checking the freight off of the bills as they brought it out. There was some men up there with wagons, and they were taking this freight out of the car, assisting Coulter, as this man Kendall would bring it to the door of the car, and a few bales of hay were broken and I told them not to handle it so rough, there were two or three bales bursted, the wire came off, and then they unloaded a lot of chops and after unloading the chops we had a lot of side meat in sacks, three or four sacks where there would be one side or two or three sides in a sack, and in unloading them they dropped it down on the platform and I stopped them and said to them, to this man that seemed to be a guard, "Move that meat back, there is no use of walking over it," and he stopped the men and told them to take it up, and they did and put it on a pile out
3734 back of the depot. And there were several bundles or boxes of household goods and one of the boxes they rolled over the chops and one sack was bursted by a corner of a box, and half a bushel or three pecks or some such amount fell out of the sack, and this man that was directing these men to unload this, who I took to be the foreman,—I called his attention to the fact that the brakeman did not do that. I said, "One of your men did it;" and he said, "That is all right."

Q. You did not want any claim made against the company?

A. No, I was there to see that the stuff was properly handled and see that my company would not be subject to the damages.

Q. Was Sandy Robinson there at that time?

A. He was, sir; there was quite a few.

Q. Where was he standing?

A. He was standing back, I suppose, nearly as far as from here to that gentleman sitting there (indicating). There were quite a few there.

Q. Did he curse or abuse anybody, or harm anyone there at all?

A. I did not hear him use an oath but only one time, I think.

Q. How did that come about?

A. Well, some little kids were running around there talking, and some I could understand and some I couldn't understand, I wasnt paying any attention to them, but there was squabbling going on and this man said something,—the first I noticed Slankard was standing over to the left of me while I was checking the freight off and he had a gun in his hand and he said, "By God, I will take a shot at you," looking right at Sandy Robinson; and Robinson said, "Shoot, you damned scab son-of-a-bitch, you ain't game enough." And I called Slankard to me, I knew him to be an officer and I said to
3735 him, "Stop this, or someone will be hurt"; and he said, "Stop this, I am an officer and I will put you in jail or arrest you if you don't stop this."

Q. Sandy Robinson had said nothing to this guard?

A. Nothing whatever, that is, to my knowledge; and I was standing there. If he did, I did not hear it.

Q. Were you standing pretty close to him?

A. Yes, sir, I was close to him.

Q. Now, I will ask you if on your trips, carrying these fellows down to that mine, if you had trouble with other parties who got off there and went down to the mine, on account of drinking and cursing on your train?

A. Well, frequently we would have people on there that were drinking, yes, sir.

Q. Well, among those who got off at this mine,—you say you did not know their names?

A. No, sir, I didn't know their names.

Q. Were the parties that got off at the mine drinking and giving you trouble on the train?

A. Yes, at times. On this particular occasion this man that Slankard searched had a bottle of whiskey in his hand going over and I took him to be going to take a drink on the car, and I told him he could not drink on the train, if he did he would be arrested, and he remarked that this was a free country and by God, he was a free American citizen and he would do as he pleased, and I told him he could not do that on this train, he couldn't do any drinking on the train because there was ladies on the train.

Q. Was there any loud or boisterous talk by this guard and those around in there while they were unloading this freight?

A. Yes, sir.

3736 Q. What action, if any, did you take with reference to that aside from the fellow that drew the gun on Sandy Robinson?

A. Below, toward the back end of the train, there was two wagons backed up there and several men with guns, I

don't know who they were, but they were standing there with Winchester rifles and talking and I went to them and told them there was ladies in the train and it was not right for them to be using that kind of language, that the windows were up and the ladies could hear their conversation and talk.

Mr. Covington: You may cross-examine.

Cross-Examination

By Mr. Hull:

Q. Sandy Robinson's school teacher, Miss Imogene Cox was on that train, wasn't she? A. I don't know.

Q. Did you know her?

A. Possibly by sight but not by name.

Q. Did you ever see any union miners drinking whiskey or in an intoxicated condition? A. Yes, sir.

Q. What union do you belong to?

A. To the Order of Railway Conductors, No. 556, Muskogee, and I have been ever since I have been eligible.

Q. And Mr. Coulter was a member of the railroad union at that time?

A. I could not say. He would have to answer to that.

Q. Now, about this man that took out a roll of bills and paid his fare,—

A. (interrupting). I did not say he took out a roll of bills at all.

Q. Well, he took out some money?

A. I said he paid his fare from Prairie Creek to Hartford.

Q. How much did he pay?

A. I believe it is 8 cents, 6 or 8 cents, I don't remem-
3737 ber exactly.

Q. Are you sure that he paid that?

A. I am, I know that he did.

Q. You are just as sure of that as any thing to which you have testified, are you?

A. Yes, sir, I am as sure of that as that I am sitting in this chair, because I took the money and gave him a receipt for it.

Q. I will ask you, Mr. Harrison, if you do not know that in the contempt proceedings in this court Sandy Robinson testified about this same incident and testified that Harris said he didn't have any money and John Manick said, "If you have no money I will give you some, "and John Menick gave him 83 cents or 85 cents. I will ask you if you don't know that Sandy Robinson testified to that effect in this court?

A. I do not, sir.

Q. Don't you know that Menick testified about this same incident in the contempt proceedings and that he said that Boraski said, "I have no money to get home", and a fellow with a striped cap on said, "I will pay it for him", and this fellow said "I am going to get off", and he said "You don't have to get off, I will give it to you", and I gave it to him. Didn't John Menick testify to that effect in the contempt proceedings?

A. No, sir, I don't know that.

Redirect Examination

By Mr. Covington:

Q. You were not there at that time, were you?

A. No, sir, this is the first time I have been in this court.

Q. But you do know who paid the fare?

A. Yes, I know the men that rode on the fare paid it himself. John Manick or anybody else did not pay it for him. He paid it himself.

Mr. Covington: That is all.

3738 JOE WHITE, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. Your name is Joe White? A. Yes, sir.

Q. Where do you live, Mr. White?

A. At Huntington.

Q. How long have you lived there?

A. Twenty-four years.

Q. What is your business? A. Coal miner.

Q. Do you know Mrs. Deacon, the lady who testified here a few days ago in this case? A. Yes, sir.

Q. Where were you on July 17th, 1914, Mr. White, the day it is said the trouble at Prairie Creek took place?

A. I was at the Mansfield picnic.

Q. What time did you go to Mansfield?

A. About nine o'clock in the morning.

Q. What time did you come away from Mansfield?

A. About two o'clock in the evening.

Q. Who did you go with on that trip?

A. I went with, I can't call his name now.

Q. To refresh your memory, was it Herman Scott?

A. No, sir, I came back with him.

Q. But you were at Mansfield at the picnic during the day from nine o'clock until two o'clock that day?
A. Yes, sir.
Q. Did you have a conversation with Mrs. Deacon about three months ago in which you told her the unions burned up the Bache-Denman property? A. I did not.
Q. Were you at Prairie Creek on April 6, 1914, the
3739 day it was said there was some disturbance there?
A. I was there at what they called the picnic.
Q. On April 6? A. Yes, sir.
Q. Who composed that picnic party? What was the party made up of?
A. Why, I could not tell you.
Q. Was it men or women or children?
A. Yes, men, women and children.
Q. Have you any idea about the number of people that were there?
A. I suppose there was three or four hundred, or something like that.

Mr. Grant: Take the witness.

Cross-Examination

By Mr: McDonough:
Q. Three or four hundred people where?
A. At the Prairie Creek school house at the picnic.
Q. On what day was that?
A. Let's see, it was on the 6th or 7th, I believe.
Q. Of April, 1914? A. Yes.
Q. Were you there that day? A. Yes,
Q. Going back to your Mansfield picnic, with whom did you go to Mansfield? A. Mr. Climer.
Q. Is he a union miner? A. Yes, sir.
Q. Are you a union miner? A. Yes, sir.
Q. Are you still a member of the union? A. Yes, sir.
Q. And were at that time? A. Yes, sir.
Q. You worked at what mine at that time?
A. I worked at No. 3.
Q. Of the Central Coal & Coke Company?
A. At No. 3, Huntington.
Q. How far is that from Huntington?
A. You mean No. 3?
3740 Q. Yes, the mine?
A. Oh, I suppose about three and one-half or four miles.
Q. West of Huntington? A. Yes, sir, southwest.
Q. How far is it from Prairie Creek Mine No. 4?

A. Well, it is about three and one-quarter or three miles. I guess, or something like that.
Q. What time in the morning did you start to Mansfield?
A. About nine o'clock in the morning.
Q. How did you go, in a buggy? A. No, I walked.
Q. How far is it from Mansfield to Huntington?
A. It is about a mile and a half.
Q. That was on the 16th of July?
A. Somewhere along that date. It was in July. I don't remember just what date it was.
Q. Do you remember whether it was the day of the battle, over at Prairie Creek No. 4 or not?
A. When I came home that evening someone said that No. 4 Prairie Creek tipple was burned down. I didn't know anything about it until I got back home.
Q. That was at what time in the day?
A. Oh, I suppose about half past two or something like that. At the time I came from Mansfield, when I got to Huntington.
Q. The day you got that information was the day that you were at Mansfield, was it? A. Yes, sir.
Q. And you came back from Mansfield with whom?
A. With Mr. Scott, Herman Scott.
Q. Were you over at Frogtown the night before?
A. No, sir.
Q. You did not go over at all the night before?
A. No, sir.
Q. Did you attend a meeting at Frogtown?
A. No, sir.
3741 Q. Did you attend a meeting in Hartford?
A. No, sir.
Q. Did you work on the day that you were at the picnic?
A. No, sir.
Q. You did not work that day? A. No, sir.
Q. Did you work the day before?
A. I don't remember whether I did or not.
Q. Did you work on April 6th?
A. No, I was at the picnic at Hartford on that day.
Q. On April 6th?
A. Not Hartford, but No. 4 Prairie Creek, at the school house at No. 4 Prairie Creek.
Q. That was a picnic? A. Yes.
Q. That was the day of the riot, the day when there was trouble down there between the men at the mines and the crowd? A. I didn't see any trouble.
Q. You refer to that as a picnic, do you? A. Yes.
Q. Was that your understanding, that it was a picnic?

A. Yes.
Q. You went over there to have a picnic?
A. Yes, sir, we marched over there and had a band.
Q. You did not go over there with any purpose connected with the burning of the Bache-Denman properties?
A. No, sir.
Q. You did not go over there to persuade the employes who were working there to quit work? A. No, sir.
Q. You did not go over there to drive the non-union men away from there? A. No, sir.
Q. Only for a picnic you went over there, is that right?
A. Yes, sir, for a picnic.
Q. Did you go over to Prairie Creek on the night of the day of the battle? A. I did not.
Q. Did you go anywhere that night? A. No, sir.
3742 Q. Did you stay at home? A. Yes, sir.

Mr. Grant: Speak louder, these jurymen cannot hear you.

A. Yes, sir, I stayed at home.
Q. Were you at Hartford the next two or three days before July 17th, the day of the battle? A. No, sir.
Q. Did you attend any union meetings of any kind within the next four or five days before that? A. No, sir.
Q. Did you see any men with guns on the day of the battle? A. I didn't,—I seen one man.
Q. Who was that? A. The day of that picnic.
Q. Was that the men that was beaten up down at Mansfield?
A. No, sir, it was up at the picnic at No. 4 school house.
Q. What I asked you, Mr. White, was about the day of the battle, the 17th of July, did you see any men with guns on that day? A. No, sir.
Q. You did not hear any guns shooting? A. No, sir.
Q. Didn't you see any union miners with guns?
A. No, sir.
Q. You were not invited to go over to the battle in any way? A. No, sir.
Q. By anybody? A. No, sir.

Witness excused.

3743 THOMAS MCDONALD, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. State your name? A. Tom McDonald.
Q. You live at Hartford, Arkansas? A. Yes, sir.
Q. Were you living there in July, 1914, Mr. McDonald?
A. Yes, sir.
Q. What is your occupation? A. Coal miner.
Q. How long have you been a coal miner?
A. I have been a coal miner for about 27 or 28 years.
Q. Are you a member of the United Mine Workers of America? A. Yes, sir.
Q. Were you a member in July, 1914? A. Yes, sir.
Q. Did you know Mr. English Daughtery before July, 1914?
A. Yes, sir, I have known him from our childhood up.
Q. Where did you know him?
A. At Briceville, Tennessee.
Q. That is where you were reared?
A. Yes, sir, I was raised there.
Q. Your mother and parents live there, do they?
A. Yes, sir.
Q. Did you see Mr. Daugherty on the 17th day of July, 1914, at Hartford? A. Yes, sir.
Q. Where was he when you saw him?
A. He was in Hartford.
Q. What was he doing?
A. Well, he had come in there after the riot they had out there.
Q. After the trouble out at Prairie Creek? A. Yes, sir.
Q. Did you invite him to go home with you on that occasion? A. Yes, sir.
3744 Q. Did he go out and spend the night with you?
A. Yes.
Q. Was his son with him on that occasion? A. Yes.
Q. Your wife was home, was she? A. Yes, sir.
Q. Tell the court and jury whether or not you made any statement to Mr. Daugherty in which you told him that you knew "Hell was going to be played over there at the mine"?
A. Mr. Daugherty was down there, and his boy, and someone came to me and asked me if I knew anyone that was out here from Tennessee. He said, "There are some Tennessee boys down here and I want to know if you know them".
Q. When was that and who was that party talking?
A. Herb King.
Q. That was on July 17th?
A. Yes, sir, in the evening of July 17th.
Q. Go ahead.

A. We walked on down there and the Daugherty boy, Andrew, was standing there at the door, and I had not seen Andrew for about eight or nine years. I was out in this country and they were yet in Tennessee. I did not recognize Andrew exactly, as he had growed out of my knowledge, and changed. His father was sitting up farther in the building and he saw me about the same time I saw him. He was sitting on a counter in the building and he got down off of the counter and came toward me and he says, "Your name is McDonald, ain't it?" And I said, "Yes, sir, your name is English Daugherty, ain't it?" And he said, "Yes, this is old English", and he said, "Tom, I am sure proud to meet you, I didn't think I would ever meet anyone in this country that I knew". And we passed a few words, and I said, "Come up and stay all night with me, you boys".

Q. (Mr. Drinker) I did not hear what you said?

3745 A. "Come up and stay all night with me, you boys."

Q. (By Mr. Grant) Go ahead.

A. So we went on and went out the door. I won't be positive whether it was Sell Goddard or John Conroy, asked me, "Are them boys going up with you?" And I said, "Yes, they are old friends and I want them to go up and stay with me all night", and he said, "All right". And we went on up, English Daugherty and his son and me, up to the house and had supper and sat there and talked. And Mr. Daugherty was relating the case to me, how he come to get into this trouble. He said a man came to Briceville, Tennessee, and told him that this was fine work out here and a man could make eight and ten dollars a day, and just talked it up to him until he got ready and came with him. And he told me that he understood they were going to Howe, Oklahoma, if I am not mistaken, and that when the train pulled in at Mansfield, Arkansas, a man came into the car and said, "We will change cars here"; and he said they came out of the car and got into a wagon and drove on until they come in to what he called a "bull pen", that is the words he used. And they drove up under the lights and he seen the men surrounding them armed with guns, and some man asked him, "Do you want supper?" And his reply was, "No, I don't want nothing to eat". Pretty soon he got a chance to speak to his son and he said, "Andrew, we are into it, let's make the best out of it we can and get out as soon as we can." And I said to Mr. Daugherty, "Well, did you work any?" And he said, "I never worked a lick. Andrew went down and started to drive a mule, and was in the mine a couple of hours and he came out." And he went ahead and stated the next day following

they taken,—these guards, he called them, taken some
3746 mattresses and some old bed clothing up to an empty house and put them in there with no bedstead and taken these boys up there, and pretty soon came another man back with Winchesters and shot guns and a lot of shells for the guns, and he said, "Boys, here is a gun, if anything happens, it is protection for you", And Mr. Daugherty said, as he stated to me, "Set those guns down. I am no gun man and don't want no guns." He said he left his wife at home and came,—

Q. You need not go into all of that. Did you say to him you know there was going to be hell at the mines?

A. No, sir.

Q. Did you tell him you went out there several times to warn him there was going to be hell out there and you expected everyone in there to be killed? A. No, sir.

Q. Did you go out to the mines at any time to see him or inquire about him?

A. I went to the mines sometime in July. I moved in July 1914, the second, sometime in July, between the 2nd and the 17th. I went out there as I had been told Mr. Daugherty was there, and I told them his name and his son's name and that I knew them.

Q. Did you go out there for the purpose of telling him there was going to be trouble out there and you expected everyone in there to be killed? A. No, sir, I didn't.

Q. Did you say anything to him about six thousand union men and 1300 gallons of whiskey being used down there?

A. No, sir; I did not.

Q. What did you and Mr. Daugherty do the following morning?

A. Daugherty and me the next morning got up and had breakfast and walked down town, down to the Rock Island depot and back up to the Grandview Hotel.

3747 Q. You spoke about Mr. Conroy and Mr. Goddard a while ago? Was Mr. Conroy mayor of the town at that time? A. Yes, sir.

Q. And Mr. Goddard was marshal of the town at that time? A. Yes, sir.

Q. Did you say to Andrew Daugherty anything about the union being too strong for such things, meaning to prevent the production of non-union coal there at the Bache-Denman mines? A. No, sir; I did not.

Q. From whom did you receive your information that Mr. Daugherty was at the Bache-Denman mines when you say you went out there to see him?

A. O'Neal I believe he calls his name.
Q. Mr. O'Neal? A. Yes.
Q. He was a man that had been working in the Bache-Denman mines? A. Yes, sir.
Q. As a non-union man? A. Yes, sir.
Q. Do you remember the night, any of the night that Frogtown was shot into?
A. That was reported in Hartford very frequently.
Q. Do you remember any people coming into town on those nights?
A. I remember people coming there to the city park, they called it, where [the] held their picnics.
Q. What were those people doing there?
A. They came there and said they were run out of Frogtown by the guards, they said.
Q. They were Frogtown people that came there and camped there at night? A. Yes, sir.

Mr. Grant: Take the witness.

3748

Cross-Examination

By Mr. McDonough:
Q. Mr. McDonald, how often had you been over to that mine to see Mr. Daugherty? A. I went one time.
Q. What date was it?
A. I dont remember just exactly what date it was. It was somewhere between the 2nd and the 17th, but I could not remember just exactly the date.
Q. Was it nearer to the 17th than it was to the 2nd?
A. Well, I just could not say whether it was or not.
Q. What is your best recollection about it?
A. My best recollection is that it would be nearer the 17th than the 2nd, that would be my recollection about it.
Q. You were living at that time at Hartford, were you?
A. Yes, sir.
Q. In what part of the town did you live?
A. I lived out east on First street.
Q. You lived near the Rock Island depot did you?
A. No, it is not right near the Rock Island depot. It is something like, I judge it to be a quarter of a mile or something like that.
Q. When did you move there?
A. On July 2nd, 1914.
Q. Were you working at a coal mine between July 2nd and July 17th? A. Yes.
Q. At what mine?

A. For the Bolen-Darnell Coal Company.
Q. At what mine? A. The Bolen mine.
Q. Under union conditions? A. Yes.
Q. You are a union miner? A. Yes, sir.
Q. Are you a member of the local at Hartford?
A. Yes, sir.
Q. Had you been a member of some other local before that?
3749 A. I brought my card from Indiana there.
Q. Had you just arrived from Indiana at that time?
A. No, sir, I had been back in Arkansas something like two or three months, or something like that.
Q. Had you worked anywhere before July 2nd at any coal mine in Arkansas? A. Had I worked anywhere?
Q. Yes, at any coal mine in Arkansas before July 2nd?
A. Yes, sir.
Q. At what mine?
A. The Fidelity Fuel Company at Greenwood.
Q. Did you put your card in at Greenwood and become a member of the union there? A. Yes.
Q. Were you a member at Greenwood up to July 2nd when you went to Hartford?
A. I was a member until I went to Indiana, at the Fidelity.
Q. Were you a member of any other union in Arkansas other than the one at Greenwood and the one at Hartford?
A. No sir,—yes, sir, I was a member of two locals. I took my card from the Fidelity local to No. 2 Greenwood Coal & Lumber Company. And I moved my card into that local.
Q. Did you go to the meeting of April 6th to the school house at Prairie Creek No. 4?
A. No, sir; I didnt.
Q. Where were you on that day?
A. I was out from Huntington at what they call Salem and knew nothing about that before dark that evening.
Q. Were you over there in the day time or in the night time when you went over there to see about Mr. Daugherty?
A. It was in the day time.
Q. Did you see anybody over there that you knew?
A. No, sir, I didnt.
3750 Q. Did you make inquiry there of anybody about Mr. Daugherty? A. Yes, sir.
Q. Who was it that you spoke to about Mr. Daugherty?
A. Well, I could not tell you who it was. I went up to the gate.

Q. Where did you go?
A. I went up to the gate at the mines.
Q. And did you inquire about Mr. Daugherty?
A. I asked that fellow, he had a great long six shooter swung onto his side, and I said, "Is there a man in here by the name of Daugherty"? And he said, "No, sir, there is not." And he called to another man and told that fellow to go and see and he went and was gone, I judge, about a minute. He just turned around the corner out of my sight and he came back and he said, "There is no man in here by that name."
3751 Q. Then you left?
A. No, I passed a word or two more with him and I said, "If there is a man in here by that name, if you please, I wish you would call me up at Hall's livery barn at Hartford. He is a friend of mine and came from my home and knows my mother and knows me and I would like to see him if he is in here."
Q. That is all there was to that? A. Yes.
Q. They did not call you up? A. No, sir.
Q. Where were you on July 17th?
A. Where was I on July 17th?
Q. Yes.
A. I was in Hartford until along up in the morning.
Q. Where did you go?
A. Then that shooting, that riot commenced and I walked over to Prairie Creek.
Q. Did you have a gun? A. No, sir.
Q. Did you go to Prairie Creek No. 4? A. No, sir.
Q. How near did you get to there?
A. I got over about half way between Frog Town and Prairie Creek.
Q. Did anybody go with you?
A. Well, I don't remember. There were several people in the road. I don't remember anyone present that was along.
Q. Did any friends of yours go along in your party?
A. No, sir, because I was a stranger at that time.
Q. You went alone, did you?
A. There was people going along the road, but I didn't know them.
Q. You did not see any people with arms, did you?
A. Yes, I seen people along there with guns.
Q. What kind of guns did they have?
A. Some had shot guns.
Q. What were they doing with them?

A. Carrying them along.
3752 Q. Which way were they going?
A. First one way and then the other.
Q. You did not hear any shooting, did you?
A. Yes, sir.
Q. Where was that shooting?
A. They were shooting down there in the valley.
Q. Did you get to Mine No. 3? A. Mine No. 3?
Q. Yes, before you got to Mine No. 4, did you get to Mine No. 3 up on the ridge? You said you got half between Frogtown,—
A. (Interrupting.) No. 3 is back from the road.
Q. You got that far, did you?
A. Yes, I judge I passed that.
Q. Was it blown up when you passed there?
A. I couldn't say whether it was or not.
Q. Was there any fire burning there at the time?
A. Well, it was smoky there in the valley.
Q. Was any fires burning, any buildings or tipples burning? A. I never seen any big fire.
Q. You did not get over to No. 4 then?
A. I never went to No. 4.
Q. And you don't know whether that tipple was burning or not? A. No, I don't know.
Q. Did you go to the school house at No. 4?
A. No, sir.
Q. You did not go to the little log cabin back of the school house in the woods?
A. No, sir, I don't know anything about that.
Q. You did not burn it that night? A. No, sir.
Q. You did not burn it at any time? A. No, sir.
Q. And you do not know who did? A. No, sir.
Q. You did not carry a gun that day at all?
A. No, sir, I had no gun.
Q. Did you have any information that No. 3 was
3753 blown up or exploded by dynamite that day?
A. No, sir, I know nothing about it being blown up.
Q. I am speaking about the mine up on the ridge between Frogtown and No. 4. A. No, sir.
Q. You did not see anyone you knew out there that day?
A. I may have seen men I knew their faces.
Q. Who were they?
A. I was not acquainted with their names.
Q. Did you see union men there with guns?
A. I could not tell you. I told you awhile ago I was a stranger there.

Q. You had been living there since July 2nd, as I understand you, at Hartford?

A. Yes, sir, I had been there about 15 days in Hartford.

Q. And during that time you had put your card in and got acquainted to some extent at your local?

A. A man would have a pretty good chance working in the mines, wouldn't he?

Q. I am asking you.

A. No, sir, I was not out getting acquainted with the men.

Q. You are not able to give the name of any man you saw on July 17th who was carrying a gun?

A. I couldn't identify positively nobody's name, no, sir.

Q. Didn't you know Slankard?

A. Slankard? I never seen Slankard that day.

Q. Do you know Sell Goddard? A. Yes, sir.

Q. Did you see him out there?

A. No, sir, I didn't.

Q. Do you know McNamara?

A. No, sir, at that time I didn't know him.

Q. What time did you go back to Hartford?

A. I went back something about 3:00 o'clock.

3754 Q. Where were you on the night before?

A. I was at home.

Q. Did you go to a meeting of any kind?

A. No, sir, I didn't.

Q. Were you at a meeting at the ball grounds?

A. Yes, sir.

Q. When was that meeting held?

A. Well now, I don't just remember.

Q. How long before the battle on the 17th of July was it?

A. Three or four days or something like that.

Q. How many men were at that meeting at the ball ground? A. Something like 160 I guess.

Q. Did you hear a report of a telephone conversation there?

A. No, sir, because I didn't pay much attention to the meeting.

Q. Who invited you to go to that meeting?

A. I was not invited.

Q. How did you happen to go?

A. It was about 75 yards of my door and I just walked down there.

Q. Did you know any of the people that were at the meeting?

A. Yes, sir, I got acquainted with a man by the name of Garrick.

Q. Who?
A. A man by the name of Dick Garrick.
Q. Did you know anybody else at that meeting?
A. Well, I couldn't say I was acquainted with anyone, no.
Q. You did not know McNamara at that time?
A. No, sir.
Q. In this conversation with Mr. Dougherty did your wife, during that conversation, after you had talked awhile remarked to you that you had better not talk too much that that matter might come up again after that?
A. No, sir, she did not.
Q. Did she make any remark of that kind?
A. No, sir.
Q. That is all.
(Witness excused.)

The Court: At this point we will adjourn for the noon recess until 2:00 o'clock.

3755 Tuesday, November 13, 1917, 2:00 o'clock P. M.

Pursuant to adjournment as aforesaid, Court reconvened, at 2:00 o'clock P. M. Tuesday November 13, 1917, the parties appearing as before, the following proceedings were had.

M. M. McWILLIAMS, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:
Q. State your name. A. M. M. McWilliams.
Q. Where do you live, Mr. McWilliams?
A. Clarksville now.
Q. Clarksville, Arkansas? A. Yes, sir.
Q. What is your occupation?
A. I am in the coal business down there.
Q. Operating coal mines and conducting a sales agency?
A. Yes, sir.
Q. How long have you been engaged in the operation of coal mines? A. 26 years.
Q. 26 years? A. Yes, sir.
Q. During those years have you operated your mines with union or non-union labor?
A. I have operated them, with the exception of two years when they first organized the union, since then I have operated with union labor.

Q. Operated under contract with the union? A. Yes, sir.
Q. Are you a member of the Southwestern Operators Association? A. Yes, sir.
Q. I mean your companies, the companies that you represent? A. Yes, sir.
Q. How long have your companies been members of the Association?
3756 A. I do not know; I judge 12 years.
Q. How many mines do you operate? A. Two.
Q. Have you attended the conferences between the miners and operators which have from time to time been convened for the purpose of negotiating contracts? A. Yes, sir.
Q. Have you attended all the conventions since you went into the Southwestern Operators Association?
A. No, sir.
Q. How many have you attended?
A. I think the last four, eight years.
Q. Eight years? A. Yes, sir.
Q. Has your companies, individually, or in conjunction with the members of your Association ever at any time entered into any agreement, contract or understanding with the coal miners of the southwest to obstruct, hinder and delay interstate commerce in the non-union fields?
A. No, sir.
Q. Have you had any such agreements, contracts or understandings to destroy the means of producing non-union coal?
A. No, sir.
Q. Have you ever at any time had any agreement, contract or understanding with the miners by which they were to go out and destroy property and take human life in order to keep non-union coal off of the market? A. No, sir.
Q. Has such a thing ever been discussed in a conference that you have attended in the last eight years?
A. No, sir.

Mr. Covington: Take the witness.

Mr. McDonough: No questions.

(Witness excused.)

3757 Ed W. Hogan, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:
Q. State your name. A. Ed W. Hogan.

Q. What is your occupation?
A. Sales agent and general superintendent of the Blue Ridge Coal Company.
Q. Where do you live? A. Oklahoma City.
Q. Does your company belong to any operators association?
A. Yes, sir, the Oklahoma Coal Operators Association.
Q. The Oklahoma Coal Operators Association?
A. Yes, sir.
Q. That is a new association, is it? A. Yes, sir.
Q. Formed,—
A. (Interrupting.) Yes, sir, [firmed] a year ago, I think a year ago last September.
Q. Before that time did your company belong to the Southwestern Operators Association? A. Yes, sir.
Q. Have you ever held any official position with the operators association in the southwest?
A. Yes, sir, Commissioner.
Q. Commissioner for how long? A. About two years.
Q. How long have you been engaged in the coal business, Mr. Hogan? A. Well,—
Q. (Interrupting.) As representative of the Operators Asociation and superintendent and general manager of the corporations referred to. A. Well, since about 1910.
Q. 1910? A. Yes, sir.
Q. Have you attended the conferences between the Operators Association and the miners in their meetings to negotiat a contract?
3758 A. The last two I was a member of them.
Q. Last two? A. Yes, sir.
Q. Mr. Hogan, at these meetings did the operators have any contract, agreement or understanding of any kind or character with the miners by which the miners were to go out and commit murder and tear up property to keep non-union coal off of the market? A. No, sir.
Q. Did they have any agreement, contract or understanding by which the transportation of non-union coal in interstate commerce would be interfered with? A. No, sir.
Q. Did they have any contract, agreement or understanding of any kind or character by which unlawful means were to be used to obstruct interstate commerce in non-union coal and to prevent the production of it? A. No, sir.
Q. Was any such thing as that ever discussed in a conference that you attended? A. I never heard it.

Cross-Examination

By Mr. McDonough:

Q. Were you connected with the San Luis Coal Company prior to the organization of the Blue Ridge Coal Company?

A. No, sir.

Q. You are now with the Blue Ridge Coal Company?

A. Yes, sir.

Q. That company owns and operates the mines in the neighborhood of McCurtain, Oklahoma? A. Yes, sir.

Q. That company was organized when?

A. The Blue Ridge Coal Company?

Q. Yes.

A. Very late in 1914 or early in 1915, I don't remember
3759 the dates.

Q. Were you Commissioner of the Operators Association in 1912 and 1914?

A. In 1913, I think it was, until some time in 1914.

Q. Was Mr. P. R. Stewart president of District 21 of the United Mine Workers at that time? A. Yes, sir.

Q. Is there any way in which you at that time could force a meeting between yourself and Mr. Stewart for the purpose of settling differences, if they arose, between an operator and the miners?

Mr. Covington: Object to that as not cross-examination.

The Court: On what theory, Mr. McDonough?

Mr. McDonough: The object in offering it was to show that there was trouble, or an impossibility of getting an agreement out of the United Mine Workers, if they desired to postpone any hearing. I believe we will wait for that though.

The Court: Very well.

Mr. McDonough: We will withdraw it.

The Court: The field is open up widely when he said there was nothing done. I think perhaps it is trespassing.

Q. You spoke of attending two conferences, where were they? A. Kansas City, Missouri, and McAlester, Oklahoma.

Q. When were they?

A. The Kansas City Conference was in 1914 and also in 1916, and the McAlester conference was in 1916 and 1917.

Mr. McDonough: That is all.

Redirect Examination

By Mr. Covington:

Q. You didn't attend any of them prior to 1914?

A. No, sir.

(Witnes excused.)

3760 D. C. McALPINE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State your name. A. D. C. McAlpine.

Q. Where do you reside? A. Haileyville.

Q. Oklahoma? A. Haileyville, Oklahoma.

Q. What is your business?

A. Manager of the Haley-Ola Coal Company.

Q. How long have you been conducting coal mines?

A. Eight years.

Q. Have you during that period been a member, or your mines been members of the Southwestern Operators Association? A. During part of the time.

Q. In what years?

A. During all the year 1914, and also we were a member during part of the negotiations, during 1916.

Q. Have you ever attended a conference between the operators and miners before 1914? A. No.

Q. Did you attend the meeting in 1914? A. Yes, sir.

Q. When was that held?

A. Beginning I think first, in May, and lasting for several months, in Kansas City.

Q. And have you conducted your mine at all times with union labor? A. Yes, sir.

Q. Under contract? A. Yes, sir.

Q. Did you ever have any agreement or understanding with the miners organization by which the members of that organization were to go out and violate the law and commit violence, to keep non-union coal off of the market?

A. No, sir.

Q. Have you ever at any time entered into any con-
3761 tract or agreement or had any understanding with the miners organization by which the members of that organization were to go out and commit murder and arson in order to prevent the production of non-union coal?

A. No, sir.

Q. Have you ever had any agreement or understanding with them by which they were to interfere with the transpor-

tation of coal produced by non-union labor in interstate commerce? A. No, sir.

Mr. Covington: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. What agreement did you have with them, Mr. McAlpine?

A. We had the agreement, the written contract, or the ones that I took part in negotiating beginning the first of August 1914, and at which we sat mutually across the table and negotiated the different parts thereof.

Q. That was at Kansas City? A. Kansas City in 1914.

Q. That was the agreement that was signed up, was it, later on? A. Yes, sir.

Q. Do you work your mines under union conditions?

A. Yes, sir.

Q. And that is the only agreement or the only convention you did attend? A. I attended the one in 1916 also.

Q. I mean in 1914. A. Yes, sir.

Q. You did not attend any before that time? A. No, sir.

Q. Where was your mine located at that time?

A. I was with the Halsey-Morris Coal Mining Company at Lehigh as superintendent of its mines, and as a mem-

3762 ber of the scale committee.

Q. The mines of the company with which you were connected were located at Lehigh? A. Yes, sir.

Q. All at Lehigh? A. Yes, sir.

Q. Did your coal move in interstate commerce to other states than Oklahoma? A. Yes, sir.

Q. Lehigh was in the State of Oklahoma? A. Yes, sir.

Q. And your coal was shipped where?

A. Our coal was shipped into Texas and occasionally shipped into Missouri, Kansas City.

(Witness excused.)

3763 W. E. Beatty, called as a witness on behalf of the defendants, having been previously sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. Have you been sworn, Mr. Beatty? A. Yes, sir.

Q. State your name? A. W. E. Beatty.

Q. Where do you reside? A. McAlester.

Q. And in what business are you engaged?

A. Coal business.

Q. How long have you been engaged in the coal business?

A. About fifteen years.

Q. During that period were your companies members of the Southwestern Operators Association?

A. Part of the time.

Q. In what years were they not?

A. I don't remember when they first became members, but they were up to the time of the organization of the Oklahoma Coal Operators Association.

Q. In conference between the miners and operators of the Southwest were you representing your companies in those conferences? A. Part of the time, yes, sir.

Q. Do you remember in what conferences you participated? A. I think in 1912, '14 and '16.

Q. 1912 and '14,—Mr. Beatty, in 1912 did you have any agreement, contract or understanding with the miners organization whereby its members were to commit violence, violate the law, and commit murder and arson in order to keep non-union coal off of the market, or to obstruct its transportation from one state to another? A. No, sir.

Q. Did you have any contract, agreement or under-
3764 standing with them by which the miners were to destroy the means of producing non-union coal in order to keep it off of the market in competition with union coal?

A. No, sir.

Mr. Covington: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. Where are the mines located, Mr. Beatty, with which you are interested?

A. We have mines at Milton, Oklahoma, at this time, and at that time I had charge of mines at Adamson and Savannah, Oklahoma.

Y. All in Oklahoma? A. Yes, sir.

Q. Your companies did make contracts with the miners union? A. Yes, sir, in Oklahoma.

Q. And operated under that contract? A. Yes, sir.

Mr. McDonough: That is all.

(Witness excused.)

3765 J. C. REED, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State your name. A. J. C. Reed.

Q. Where do you live?

A. In McAlester, Oklahoma.

Q. What is your occupation?

A. Manager of the Oklahoma Mining & Stripping Company.

Q. How long have you been engaged in directing or conducting and operating coal mines?

A. About 18 or 19 years.

Q. Did you operate with union labor or non-union?

A. I operated with union labor most of the time, part of the time open shop.

Q. Part of the time open shop? A. Yes, sir.

Q. Were you a member of the first conference that was held between the miners and operators of the Southwest?

A. Yes, sir.

Q. Where was that held, at Pittsburg?

A. No, it was held in this city, here, the first one.

Q. Held here in Fort Smith, the first one, in 1903?

A. 1902.

Q. Were you a delegate to the convention which convened in Pittsburg in 1904? A. 1904.

A. 1903, I mean. A. Yes, sir.

Q. And again in 1904? A. Yes, sir.

Q. How many conferences have you attended since the 1902 conference, up to 1914?

A. I have attended them all up to and including 1910, and then the conference held in 1916.

Q. Mr. Reed, did the operators and miners in either
3766 of the conferences referred to by you in 1902 up to and including the conference of 1910, have any contract, agreement or understanding of any kind or character by which the miners were to use lawless means, or resort to violence and burn down property and commit murder in order to keep non-union coal off of the market in competiton with union coal?

A. Not to my knowledge, not that I know of.

Q. Did they have any contract, agreement or understanding of any kind or character by which they were to interfere with the transportation of non-union coal in interstate commerce? A. No.

Q. Did they have any such agreement or understanding by which the miners were to destroy the means of producing non-union coal?

A. No, not that I know of.

Mr. Covington: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. Where are your mines located now?

A. Near Lehigh, Oklahoma.

Q. Where were the mines located with which you were connected in 1902?

A. In the McAlester, Oklahoma, district.

Q. Were they the properties which were afterwards known as the Busby properties? A. Yes, sir.

Q. These companies are not in existence now, are they?

A. Yes, sir, the same companies are still in existence.

Q. Operating now? A. Yes, sir.

Q. Where are,—

A. (Interrupting.) I had better qualify that. The same properties are still operating. I understand the companies are in a receivership.

3767 Q. How many years have those properties there at McAlester, if at all, operated under non-union conditions?

A. Well I don't know. I didn't operate them in those days under non-union conditions.

Q. When did they begin, in 1912, in operating under union conditions?

A. Yes, sir, the properties were non-union at that time, as the Busby properties were operating in 1902 under union condition.

Q. Were they operating before that under union conditions? A. No, under open-shop conditions.

Q. And did they operate under union conditions up to the time of the receivership of the company?

A. Under union conditions?

Q. Yes. A. Yes, sir.

Q. The mines with which you are connected are now at Lehigh? A. Yes, sir.

Q. That is some distance from McAlester?

A. Yes, sir, about fifty miles.

Q. The coal that is mined from the McAlester mines, as well as that mined at Lehigh, moved in interstate commerce, or a large part of it, does it not? A. Yes, sir.

Mr. McDonough: That is all.

(Witness excused.)

3768 J. D. FINNEY, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State your name? A. J. D. Finney.

Q. Where do you live, Mr. Finney?

A. At Poteau, Oklahoma.

Q. What is your occupation? A. Coal operator.

Q. How long have you been engaged in the coal business operating mines?

A. Except for three or four years, since 1896.

Q. With what companies have you been connected since you began the conduct and operation of mines?

A. With the Aransas Pass Coal Company, Rockdale, Texas, with the Dallas Coal Company at Huntington Arkansas with the Midland Six Coal Company at Midland, Oklahoma, and the Katy Coal Company at Midland.

Q. Mr. Finney, the companies conducted by you, were they members of the Southwestern Interstate Coal Operators' Association?

A. All of the companies except the first company mentioned.

Q. Did you at any time hold any official position with the Southwestern Interstate Coal Operators' Association?

A. Yes, sir, I was a commissioner in 1910, 1911, 1912 and a part of 1913.

Q. Did you during that period attend the conferences between the operators and miners A. Yes.

Q. Did you have any contract,— did the operators have any contract, agreement or understanding of any kind
3769 or charcter with miners by which the miners to obstruct, hinder and delay transportation of non-union coal in interstate commerce, or resort to murder or arson in preventing its production?

A. No.

Q. Did they have any agreement, contract or understanding of any kind or character by which they were to resort to unlawful means of any kind or character to prevent the transportation of non-union coal in interstate commerce?

A. Nothing of the kind that I know of.

Q. Nothing of the kind ever occurred? A. No, sir.

Q. And that applies to the production of coal, does it?

A. Yes.

Mr. Covington: That is all.

Cross-Examination

By Mr. Donough:

Q. Mr. Finney, did you ship your coal to other states than Arkansas, a large part of it?

A. Yes, a very great deal of it.

Q. You did have a contract with the miners' union?

A. Yes, sir, since March 1st, 1899.

Q. You operated under that contract? A. Yes.

Q. You mined your coal under that contract.

Mr. McDonough: That is all.

Witness excused.

3770 P. R. ALLEN, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct-Examination

By Mr. Covington:

Q. State your name? A. P. R. Allen.

Q. Where do you live, Mr. Allen?

A. McAlester, Oklahoma.

Q. What is your business? A. Coal operator.

Q. How long have you been engaged in the conduct and operation of coal mines? A. About 14 years.

Q. Did your companies belong to the Southwestern Interstate Coal Operators' Association during that period?

A. They did up to the time of the organization of the Oklahoma Operators' Association.

Q. When was that organized?

A. The latter part of 1915 or 1916.

Q. Did you during this period attend any conferences between the miners and operators, looking to the making of contracts?

A. I did, yes, sir.

Q. Mr. Allen, how many conferences have you attended during these 14 years that you recall? A. Five or six.

Q. Can you name the years?

A. From about 1906 to the last conference which was in 1916,—from 1906, to about 1916.

Q. Then you were in all of the conferences from 1906 up to 1914? A. Yes, sir.

Q. Did the coal operators in those conferences have any contract, agreement or understanding of any kind or character with the miners by which the miners were to go out and

resort to violence or lawlessness to prevent the transportation of non-union coal in interstate commerce?

3771 A. Not to my knowledge.

Q. Did they have any agreement, contract or understanding of any kind or character, by which they were to commit murder or arson in order to prevent the production of non-union coal?

A. Not to my knowledge, no, sir.

Mr. Covington: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. Where are the mines located with which you are connected?

A. They are located in the McAlester field and in the Henryetta field and in the Lehigh field.

Q. In the state of Oklahoma? A. Yes.

Q. Your coal is shipped outside of the state of Oklahoma to a large extent, is it? A. Yes.

Q. The majority of it goes out of the state?

A. Yes, the majority of it is shipped outside of the state.

Q. Have those mines all been operating under union conditions since 1906? A. Yes, sir.

Q. You made a contract with the United Mine Workers of America, did you?

A. About every two years we renewed a contract and had a contract with the United Mine Workers of America.

Q. And operated your mines under that contract?

A. And operated the mines under that contract, yes, sir.

Witness excused.

3772 J. G. PUTERBAUGH, recalled as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct-Examination

By Mr. Covington:

Q. Mr. Puterbaugh, you live at McAlester, Oklahoma, and are engaged in the coal business, I believe you stated the other day when you were on the stand? A. Yes, sir.

Q. How long have you been engaged in the coal business?

A. Well, I have been engaged in the coal business since about 1893.

Q. Are you President of the McAlester Fuel Company?

A. Yes, sir.

Q. That is a sales agent organization, I believe?
A. Yes, sir.
Q. How long have you been engaged as a sales agent in McAlester? A. Since 1902.
Q. You also operate one of the largest mines in the state of Arkansas, I believe?
A. Yes, sir, I am President of the Southern Anthracite Coal Mining Company.
Q. Mr. Puterbaugh, has your company been a member of the Southwestern Interstate Coal Operators' Association at any time from the time of its organization up to 1914?
A. Yes, sir, I became interested in that company only in 1913. At that time it was a member of the Southwestern Interstate Coal Operators' Association, and had, I think, been for a number of years preceding that time.
Q. Have you at any time attended the conferences held between the miners and operators in negotiating their contracts?
A. Yes, sir.
3773 Q. How many contracts have you attended?
A. Well, I have never participated in any conference in any official capacity. I have been present in Kansas City when the meetings were being held, when the joint conventions or negotiations were being conducted.
Q. Was there any understanding, agreement or contract of any kind or character between the miners and operators, by which the miners, in consideration of the operators conducting their mines with union labor,—to go out and commit lawless acts and resort to violence, to prevent the shipment of non-union coal in interstate commerce?
A. No, sir, not that I know of.
Q. Was there any contract or agreement of any kind or character by which they were to destroy the means of producing it?
Q. No, sir.
Q. Or to commit murder or arson in carrying out that agreement? A. No, sir.
Q. In order to keep it off of the market in competition with union coal? A. None that I know of.
Q. Your sales agency, does it handle exclusively non-union coal? A. No, sir.
Q. You handle all kinds, do you? A. Yes, sir.
Q. And have been handling the output of the non-union mines of Arkansas for years? A. Some of them.
Q. And selling it right along with the coal produced by union mines? A. Yes, sir.

Mr. Covington: That is all.

Cross-Examination

By Mr. McDonough:

Q. Where is the coal marketed that is mined by the Southern Anthracite Coal Mining Company?

A. Throughout Arkansas, Kansas, Missour, Iowa,
3774 Texas and Oklahoma.

Q. Does the majority of the coal of that company go beyond the limits of Arkansas for markets? A. Yes, sir.

Q. Is that mine operated under a contract with the United Mine Workers of America? A. Yes, sir.

Q. The mine is operated and the coal mined under that agreement? A. Yes, sir.

Mr. McDonough: That is all.

Redirect Examination

By Mr. Covington:

Q. I neglected to ask you, Mr. Puterbaugh, is there any difference in the price made on union and non-union coal?

A. No, sir.

Q. It sells in the market for the same price?

A. Yes, sir.

Recross Examination

By Mr. McDonough:

Q. Mr. Puterbaugh, with reference to that, the coal in the market sells in the market in accordance with the character and nature of that coal, does it not? A. Yes, sir.

Redirect Examination

By Mr. Covington:

Q. The same grade and character of coal are sold at one and the same price in the market?

A. Yes, sir, the public does not know what kind of labor mines the coal; it is all a matter of grade and quality.

Witness excused.

3775 JAMES P. HOYE, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct-Examination

By Mr. Covington:

Q. Your name is James P. Hoye? A. Yes, sir.

Q. Where do you live, Mr. Hoye?

A. My home is in Clarksville, this state.

Q. What is your business? A. Operating coal mines.

Q. How long have you been engaged in the conduct and operation of coal mines?

A. Well, with the exception of a couple of years I have been operating coal mines in Arkansas for the last 23 years.

Q. The companies that you have conducted, have they been members of the Southwestern Coal Operators' Association at any time during the last few years, up to 1914?

A. Some of them have, the most of them.

Q. Have you attended any of the conferences between the miners and operators? A. Yes, sir.

Q. How many conferences have you attended, Mr. Hoy, up to 1914?

A. Well, I attended the first one that was held and every one of them up to 1911.

Q. You were in the first conference then between the operators of the Southwest and the miners? A. Yes, sir.

Q. And you have attended them all gradually along up to 1911?

A. Yes, sir.

Q. Now, in either of these conferences, from 1902 to 1911, did the operators have any contract, agreement or understanding of any kind or character with the miners by which they were to resort to violence and lawlessness in order to prevent the shipment and transportation of non-union

3776 coal in interstate commerce?

A. No, sir.

Q. Did they have any contract, agreement or understanding of any kind or character with the miners by which the miners were to go out and commit murder and arson in order to destroy the means of producing non-union coal?

A. None that ever I attended.

Q. And you were in attendance for eleven years?

A. Yes, sir.

Q. And you heard nothing of the kind? A. No, sir.

Cross-Examination

By Mr. Donough:

Q. Did you make a contract with the miners' union?

A. At those conferences, yes.

Q. And operated your mines under that contract?

A. Yes, sir.

Witness excused.

3777 R. A. YOUNG, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State your name. A. R. A. Young.

Q. Where do you live, Mr. Young?
A. I live at Ft. Smith, Arkansas.
Q. What is your business?
A. Superintendent of the Greenwood Coal Company and the Bokoshe Coal Company.
Q. The Greenwood Coal Company of Sebastian County?
A. Yes.
Q. And the Bokoshe Coal Company of Oklahoma?
A. Yes.
Q. How long have you been engaged in the conduct and operation of coal mines? A. Oh, about 12 years.
Q. During this period were the mines conducted by your members of the Southwestern Interstate Coal Operators' Association? A. Yes, sir.
Q. Were you ever a delegate to any of the conferences during these years?
A. I was a member of the conference two years ago.
Q. Two years ago? A. Yes, sir.
Q. Up to that time you had not attended any of them?
A. No, sir.
Q. How were your mines operated?
A. By union miners.
Q. By private contract between your companies and the miners or by contract made by the Southwestern Interstate Coal Operators's Association?
A. Contract made by the Southwestern Interstate Coal Operators' Association.
3778 Q. Do you know if there was any contract, agreement or understanding of any kind or character between the miners and operators by which the miners were to interfere with interstate commerce or resort to lawless means and violence to prevent the production of non-union coal? A. I never heard of any.
Q. You never heard of it? A. No, sir.
Q. And have been operating mines for twelve years?
A. Yes.
Q. Did you ever hold any official position in the state?
A. Yes, I have been state mine inspector.
Q. How long were you state mine inspector of the state of Arkansas? A. Two years.

Mr. Covington: Take the witness.

Mr. McDonough: No questions.

Witness excused.

3779 W. J. HAMILTON, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. State your name? A. W. J. Hamilton.

Q. You live at Hartford, Arkansas, do you Mr. Hamilton? A. Yes, sir.

Q. How long have you lived there?

A. About fourteen years at the present time at Newtown, it is called. I formerly lived at the old town.

Q. Where were you living on the 17th of July, 1914, Mr. Hamilton? A. I was living in Hartford.

Q. In Hartford, Arkansas? A. Yes, sir.

Q. Where were you on the 17th day of July, 1914?

A. I was in Hartford.

Q. Do you know one, James Henry Meeks?

A. I knew a fellow about three years ago by the name of Jim Meeks, I suppose it is the same person.

Q. What business are you engaged in, Mr. Hamilton?

A. I am in the mercantile business in Hartford.

Q. Were you around Prairie Creek on the 17th day of July, 1914? A. Repeat the question, please.

Q. Were you at Prairie Creek when the trouble occurred on July 17th, 1914? A. No, sir, I was not there.

Q. You did not take any part in it and know nothing about it? A. No, sir, only by hearsay.

Mr. Grant: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. You were in Hartford that day, you say?

A. Yes, sir.

3780 Q. And the night before? A. Yes, sir.

Q. Did you see any guns there?

A. The night before?

Q. Yes.

A. Well, I rather believe it was the night before. Yes, sir, I saw some guns there one night.

Q. Were you at the meeting of April 6 over at the mines, —at the school house? A. I was at the school house.

Q. What did you go over there for?

A. Well, I might say through curiosity. I understood there was a meeting over there. It was not my intention to go at all. S. O. Harris called me and asked me to go in his car with him. He had a car and I went with him.

Q. Did you close your store?
A. No, I didn't close my store.
Q. Did you hear the speaking?
A. Yes, sir, I heard, I suppose, all of it.
Q. Did Jim McNamara make a speech? A. Yes, sir.
Q. He was a union miner?
A. That was my understanding.
Q. Did Rufe Hamilton, your brother, make a speech?
A. Yes.
Q. Was he a miner? A. No.
Q. Did you know Ed Brandon? A. Yes, sir.
Q. Did he make a speech?
A. Well now, he may have, I would not be sure.
Q. Did Freda Hogan make a speech?
A. She made a few remarks.
Q. Did Slankard make a speech?
A. I could not say he made a speech. After the speaking was pretty well through with, he suggested the appointment of a committee to go over to the mine to interview the foreman.

Q. Did you take part in the trouble that arose there?
3781 A. No, sir.
Q. Did you go back to Hartford from the school house? A. Yes.
Q. You did not go down to the mine?
A. I went part of the way after the crowd had pretty well dispersed.
Q. You did not go down there until the trouble was over?
A. No, it was over with as far as I know. I don't know whether it was over or not because I didn't go all of the way.
Q. Were you a witness in the contempt proceedings?
A. Yes, I believe I was.
Q. Or the injunction proceedings, which?
A. Well, I don't know which it was, perhaps it was the injunction; I would not be sure.
Q. How did you happen to go over there on April 6?
A. I went with Mr. Harris in the car.
Q. You had known about the meeting before that?
A. I heard there was to be a meeting before that.
Q. Who told you about it? A. I couldn't say now.
Q. Did the miners' union come and ask you to close your store? A. They did not.
Q. Didn't you testify in the injunction proceedings that it was generally [know] that the miners were going over there and asked everybody to go with them?

A. I might have said it was generally known. They didn't ask me to go.

Q. The greater part of your business was with the miners then, wasn't it, Mr. Hamilton?

A. Yes, I suppose the larger portion of it was with the miners. Some was with the farmers, all classes, in fact.

Witness excused.

3782 W. S. SAMPSON, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:

Q. State your name. A. W. S. Sampson.

Q. Where do you live? A. In Bokoshe, Oklahoma.

Q. What is your business?

A. Bookkeeper for the Bokoshe Coal Company.

Q. In what business were you engaged in 1914?

A. Keeping books for the Bolen-Darnell Coal Company at Hartford.

Q. Were you keeping their books on the 17th day of July, 1914? A. Yes, sir.

Q. Were you in the office that day? A. Yes, sir.

Q. Did B. Trout work at the mine that day?

A. Yes, my records show that he did.

Q. Your record shows he was paid for that work?

A. The daily time sheet shows he worked on that day.

Mr. McDonough: We object to that and move the answer be stricken out on the ground that the books themselves would be the best evidence.

The Court: The objection is sustained and the answer will be stricken out.

Mr. Covington: He had refreshed his memory by referring to the books, as I understand it. If they want the record, we will send and get that.

Cross-Examination

By Mr. McDonough:

Q. Were you in Hartford, Mr. Sampson, on the day
3783 that the battle occurred over at Prairie Creek?

A. Yes, sir, I was.

Q. You were engaged with what company, what kind of business?

A. Mining, I was with the Bolen-Darnell Coal Company.

Q. Your mines did not operate on that day, did they?

A. No, sir.
Q. When did you get information there was going to be a battle over at Prairie Creek on that day?
A. Well, it seems to me like it was about nine or ten o'clock in the morning I heard from there.
Q. What information, if any, did you have of it on the night before? A. I did not have any.

Mr. Covington: We object to this on cross-examination.

The Court: Sustained.

To which ruling of the court the plaintiffs, and each of them, then and there duly excepted and still except.

Q. Did you go over to Prairie Creek yourself that day?
A. Yes, sir, I was over there along about one o'clock in the afternoon.
Q. Did you go horseback? A. No, I walked.
Q. Did anyone go with you? A. Yes, sir.
Q. Was the mine burned up when you got there, or was it on fire? A. It was on fire, I believe.

Witness Excused.

3784 Dan Wilcox, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grant:
Q. State your name. A. Dan Wilcox.
Q. Where do you live? A. At Krebs, Oklahoma.
Q. What is your business? A. Coal miner.
Q. You are mining yourself? A. Yes, sir.
Q. Do you belong to the United Mine Workers of America? A. Yes, sir.
Q. Were you a member of that organization in 1914?
A. No, sir,—yes, sir, I was a member of the organization.
Q. In 1914? A. Yes, sir.
Q. Were you in Hartman in 1914? A. Yes, sir.
Q. How many times?
A. In February and August, I believe, twice.
Q. Do you know a man by the name of James A. Murray?
A. No, sir, not that I know of.
Q. What were you doing at Hartman?
A. I came here to a convention. I taken my wi' down there in February I believe it was, so she could stay while I was attending the convention, and in August I went down there and went to work.

Q. Who was your wife visiting? A. Her father.
Q. Did you tell a man by the name of James A. Murray at Hartman on either of those trips during the year 1914 that you were the president of the local union of United Mine Workers at Adamson, Oklahoma, and that the union miners from Oklahoma were going to march down to Prairie Creek and clean out the boys who were working the Prairie Creek mines?
3785 A. No, sir, I never made no such statement.

Mr. Grant: Take the witness.

Cross-Examination

By Mr. McDonough:
Q. Where were you on July 17, 1914?
A. I was at Adamson, Oklahoma.
Q. What were you doing? A. I was digging coal.
Q. Where? A. At No. 1 Adamson.
Q. At No. 1 Adamson? A. Yes, sir.
Q. Where is Adamson, from McAlester, what direction?
A. It is about 14 miles east, on the Katy Branch.
Q. Were you in Arkansas at any time during the early part of July, 1914? A. No, sir.
Q. Were you in Arkansas at any time during 1914?
A. Yes, sir.
Q. When?
A. I was there in February and August, the latter part of August.
Q. Where were you? A. At Hartman.
Q. In August 1914? A. Yes, sir.
Q. And in February 1914? A. Yes, sir.
Q. Were you visiting anybody in February, 1914?
A. No, sir, I just went down there to take my wife down to her father's.
Q. What time in August did you go there, in 1914?
A. Along about the last of August.
Q. Were you visiting anybody there then?
A. No, sir, I went to work.
Q. Did you go to work there?
A. Yes, sir.
Q. How long did you work there?
A. I worked about seven or eight days, or something like that.
Q. Between February 1914, and August 1914, you said
3786 you were not in Arkansas at all?
A. Between,—no, sir, not that I know of.
Q. Did you work over in Oklahoma during the time between February 1914 and August 1914?

A. Yes, sir, at Adamson.
Q. At Adamson? A. Yes, sir.
Q. For what coal company were you working?
A. The Union Coal Company.
Q. Who was the manager, and president of that company?
A. I don't know who the president was, but the manager was Mr. McKennon, Aleck McKennon.
Q. Aleck McKennon? A. Yes, sir.
Q. Where is he now?
A. He is at Adamson, I suppose, he was the last time I saw him.
Q. Is he still in the coal mining business? A. Yes.
Q. Is that same coal mine running there? A. No, sir.
Q. When did it quit running?
A. It caved in just a few days after I left there.
Q. You have not been working at the same place then?
A. No, sir.
Q. You are working for a different company?
A. Yes, sir.
Q. What number of mine is it? A. No. 1.

(Witness excused.)

3787 NICK BERKELL, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Covington:
Q. What is your name? A. Nick Berkell.
Q. Where do you live? A. Five miles north of Bokoshe.
Q. What is your business? A. Farming.
Q. Where were you living in the summer of 1914?
A. I lived two and one-half miles southeast of Prairie Creek.
Q. Were you living there during the months of April, May, June aad July? A. Yes, sir.
Q. Were you at any time taken into custody by guards at the Bache-Denman Mine No. 4? A. Yes, sir.
Q. Was it in the night time or the day time?
A. It was in the night.
Q. Where were you when you were taken into custody?
A. I was in the public highway.
Q. On the road running through by Prairie Creek, the main public road to Hartford?
A. Yes, the public road to Hartford. I was in front of the school house.
Q. You were in front of the school house?

A. Yes, sir, in front of the school house in the public road.
Q. What were you doing there? A. I was going home.
Q. Where had you been?
A. I was over to No. 6 Central.
Q. For what purpose?
A. I had been over there to see about getting work.
Q. You had been over there to see about getting work?
A. Yes, sir.

3788 Q. What was done with you? Tell the jury what occurred and how it was.

A. Well, they was just a bunch of them guards stopped me there and threw them guns down on me and marched me down there a piece and two more stepped up and threw two more guns in my face and told me to come on with them and they taken me down to the stockade, or whatever you call it, and kept me there all night. As I went in this fellow Langford said, "Well, you got the God damned dirty son-of-a-bitch that has been slipping around and cutting the wires".

Q. What was done then, what else?
A. Well, they just guarded me in there that night.
Q. Who guarded you? A. That fellow Cheek.
Q. Charley Cheek? A. Yes, sir.
Q. Did you make any effort to get them to release you?

A. Yes, sir, I tried to get them to let me go home. My mother was by herself and didn't have anyone to stay with her. She is about 65 years old and I had not been staying out of night away from her that way.

Q. What occurred the next morning, if anything? What did they do with you the next day?

A. They taken me and brought me up to Fort Smith, Buster Moore did, and I tried to get him to let me go home and tell my folks, and he said, "No, you might as well come with me," and he and Cooper Langford brought me up here and put me out in town. I didn't have no money to go home on or get dinner with or anything else, and I was up town and I happened to run across Fitzgerald, and he gave me money to go home on, I borrowed enough from him to go home on.

Q. Did you ask them to let you ride up to Fort Smith
3789 with them? A. No, sir, I didn't.
Q. Were you summoned up here by any officers?
A. No, sir.
Q. Did Cooper Langford use this language to you, "Don't be uneasy, there is not a man here that will harm a hair on your head"?
A. I didn't hear that statement, I didn't feel that way anyway.

Q. Had you bothered the company's property in any way or had anything to do with cutting these wires or anything of the kind at all?

A. No, sir, I had not been around there on any of its property.

Mr. Covington: That is all.

Cross-Examination

By Mr. Hull:

Q. Mr. Berkell, who was with you that night?

A. There wasn't no one with me.

Q. There was no one with you at all that night from the time you left the place where you had been looking for work?

A. Well, I stopped over there on the road and was talking to my girl, of course she did not go with me. I left her at home.

Q. Where was that?

A. She was at home, over between No. 6 and No. 4 camp.

Q. And you did not meet any men that night at all but these two men that threw their guns on you?

A. Yes, sir, some men there in the road drew their guns down on me and guarded me down to these two men.

Q. Where had you been, you say? A. To No. 6.

Q. No. 6 Central? A. Yes, sir.

Q. And they turned you over to United States Marshal Holt when they got you into the pen? A. No, sir.

Q. They did not? A. No, sir.

3790 Q. Did you see Holt there that night? A. Yes, sir.

Q. Where was he?

A. He was in one of those tents.

Q. But he was not there, they did not turn you over to him at all?

A. No, sir, he did not have anything to do with me.

Q. You testified in the contempt proceedings, didn't you, Mr. Berkell? A. Sir?

Q. You testified in the contempt proceedings in this court room in the other proceedings that grew out of this case?

A. Yes, sir.

Q. I will ask you for the purpose of refreshing your recollection, if you did not testify here,—if you were not asked the question. "If the two men told you to consider yourself under arrest, why did they turn you over to Marshal Holt?" And if you didn't answer, "They turned me into the pen. I don't know who they was turning me over to." "You understood it was Marshal Holt?

A. They didnt' tell me who they were turning me over to.

Q. Was that Mr. Holt? A. Yes, sir.
Q. Was he there? A. Yes, sir.
Q. Did he take care of you?
A. It looked like they all taken charge of me."
A. Yes, sir, that is the way it was, that is the way it looked to me for awhile.
Q. Then Holt was there?
A. Yes, sir, I told you he was there.
Q. I thought you said he was not there, he was in a tent.
A. They turned me over down there in that pen.
Q. And he was there wasn't he, in the crowd they turned you over to? A. He was down there at the tent.
3791 Q. Answer my question, he was there in the crowd, wasn't he? When they turned you over there?
A. I don't know what you mean, there was so many had hold of me ordering me around there.
Q. United States Deputy Marshal Holt was there, standing there when Charlie Creek and Harry Dunlap turned you over? A. When they brought me down, yes.
Q. And you say that the Marshal did not get any subpoena for you? A. No, sir.
Q. Would you say that he did not? A. He did not.
Q. Didn't Mr. Holt say anything about having telephoned and getting word for you to go to Fort Smith?
A. I don't think he did, I don't remember whether he did or not. I wouldn't say that he didn't, to my face. I don't know whether he telephoned or not. He didn't tell me he had a subpoena for me.
Q. You won't say that he did not tell you he had telephoned and that you were to go to Fort Smith, will you?
A. What?
Q. Will you say that Mr. Holt did not tell you he had telephoned to Fort Smith and he had orders for you to go to Fort Smith? Will you say he did not tell you that? A. No, sir.
Q. Now do you know the other marshal that was there, a rather oldish man named Chitwood?
A. I don't know any of them so far as that is concerned only what they said, a man getting in a bunch of strangers, he forgets them.
Q. Do you remember a man about 55 or 60 years old that took you in charge, a grey haired man?
3792 A. I remember an old man taking me there for a little while and turning me over to Cheek.
Q. How long was he there with you?
A. I dont' remember, but not very long.

Q. Didn't you sit there with Chitwood, if that was his name, an old man, that took charge of you,—did you not sit by his tent about two hours?

A. I don't remember how long, it didn't seem long to me.

Q. And isn't it a fact you were scared and told him you expected union men outside were going to fire into the camp?

A. No, sir, I did not.

Q. Did you say anything to him that if those were union men out there that had been shooting you expected they would fire into the camp right away? A. No, sir.

Q. And didn't you beg to get down in a little low place in the ground? A. No, sir.

Q. Now, when you say Cheek took charge of you what did he do with you?

A. He just hung around with me, with a six shooter on and guarded me all night.

Q. Did you sleep any that night? A. No, sir.

Q. Was he standing up or lying down?

A. I just sat around there.

Q. Did Cheek sit up all night, that is, he did not sleep any?

A. No, sir, he didnt' sleep any.

Q. And it is not true, is it, that you were lying alongside of the tent and Charley Cheek was jabbing you with a gun through the tent canvas as you slept? A. No, sir.

Q. That is not true, is it? A. No, sir.

Q. And you say that Charley Cheek and you sat up
3793 all night and did not sleep at all?

A. We sat up from the time they brought me in until the next morning, and didn't sleep.

Q. If United States Marshal Chitwood testified the other day in this court room that you slept alongside one of those tents and Charley Cheek slept about twelve feet from you and he saw you both asleep, you will say that is not true?

Mr. Neal: We object to the form of the question.

The Court: I think it is proper form for impeaching testimony. The objection is overruled.

To which ruling of the Court, the defendants, and each of them, at the time duly excepted and still except.

Q. Will you say that was not true?

A. If I dozed off to sleep I don't remember it.

Q. And if Charley Cheek dozed off to sleep you don't remember it?

A. If I dozed off, he did when I did and I don't remember that I dozed off to sleep. I wouldn't swear I didn't because the way they kept me there all night I don't remember doz-

ing off to sleep and I felt afterwards as if I hadn't slept for two weeks.

Q. Did you bring a suit for false imprisonment or false arrest against the Mammoth Vein Coal Mining Company for this affair? A. No, sir.

Q. Did some attorney bring it for you?

A. I don't know whether he did or not.

Q. You do not know of any attorney bringing a suit in your behalf against the Mammoth Vein Coal Mining Company for false arrest or false imprisonment, growing out of this affair? A. No, sir.

Mr. Hull: That is all.

(Witness excused.)

3794 MISS ELLA HOWARD, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. State your name? A. Ella Howard.

Q. Where do you live? A. Prairie Creek.

Q. How old are you? A. 16.

Q. Where were you living in 1914?

A. At Prairie Creek.

Q. Did you go to school down there in 1914? A. Yes.

Q. Where did you attend school?

A. No. 4 Prairie Creek.

Q. At Prairie Creek School House at Mine No. 4?

A. Yes, sir.

Q. Did you at any time on your way to school have any trouble or be interrupted by anyone with a gun at any time?

A. Yes.

Q. About when was that? A. In March.

Q. Was it in March or April? A. In March.

Q. About what time in March, do you remember the date?

A. No, sir, I don't remember the date.

Q. Was it before or after the guards had been put out at the Bache-Denman property near the school house?

A. Before.

Q. Did you go to school there in April? A. Yes, sir.

Q. Did you go to school in company with Miss Jessie Thompson and your brother Howard? A. Yes, sir.

Q. Had the guards been put out at the Bache-Denman property? A. No, sir.

Q. Did you attend school there at any time after they were put out there? A. Yes, sir.

Q. When was that?

3795 A. It was in the winter school, the winter afterwards.

Q. You never went to school in the spring,—in April 1914 then?

A. Yes, sir, I went in 1914. School was out the 17th of April.

Q. Did you attend school from the first of April until school closed? A. Yes, sir.

Q. Tell the Court and jury what, if anything, was said or done by any non-union people working there in connection with the Bache-Denman property, those guards?

Mr. McDonough: The time should be fixed.

The Court: Yes, I think that is rather indefinite.

Q. During the the time from the first day of April until the 7th day of April, until your school closed.

A. We were going to school one morning in April before school was out.

Q. Speak out a little louder so the jury can hear you.

A. We were going to school and two of these men passed in a wagon and both of them had guns and me and my sister was about 100 yards ahead of my brother and they drew their guns on us, and my brother ordered them to put the guns up.

Q. What did they say when they drew their guns on you?

A. They said they would shoot us.

Q. Were you present with Teresa del Rosa, another little girl at any time when improper proposals were made to you?

A. Yes, sir.

Q. When was that?

A. Along the last of March.

Q. The last of March? A. Yes, sir.

Q. Who was it that made those improper proposals to you, if you know?

A. Well, it was some non-union men.

Q. Some of the men there guarding the Bache-Denman properties?

3796 A. Yes, sir.

Mr. McDonough: I don't know whether counsel heard her or not. She said she supposed they were non-union men.

Q. What place did this happen, at Prairie Creek No. 4 school house? A. Yes, sir.

Q. That is right across from the Bache-Denman property? A. Yes, sir.

Q. Now, what was it that they said to you, if you know?

A. Well, her and I went up to the toilet and they asked us to come up on the hill and offered us $2.00 and threatened to shoot us if we didn't.

Q. How is that?

A. We went up to the toilet and they offered us $2.00 and told us to come up on the hill and threatened to shoot us if we didn't.

Q. Who was with you at the time they did that?

A. Teresa del Rosa.

Q. What did you girls do then?

A. We went back to the school house.

Q. Did you report it to the teacher?

A. No, sir.

Q. After that time,—did you report it at home when you got home, what happened? A. No, sir.

Q. About that time, in May, do you know anything about any shooting from the camp there where the Bache-Denman people were employed, around No. 4, and the bullets falling around you anywhere?

A. When I was going to the store one day there was a bullet fell around me there, when I was coming from the store.

Mr. Grant: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. What time was that, the time of the bullet falling?

3797 A. Sir?

Q. What time was that?

A. It was in the morning.

Q. What month was it?

A. I don't remember just what month it was, but it was when we were over at No. 4.

Q. Was it near the school house? A. Yes, sir.

Q. Where did you live from the school house, where did your father live?

A. We lived one side of the school house.

Q. And you were on your way to the school house to your home?

A. I was on the way from the store over to my home.

Q. Do you know how far it is from your home to the school house? A. It is not very far.

Q. How long did it take you to walk it?

A. About five minutes.
Q. And you think you heard some bullets falling while you were making that trip, do you? A. Yes, sir.
Q. Can you give us any better idea than what you have already done as to the time when those bullets fell, what month it was? A. No, sir, I can't.
Q. You could not locate that? A. No, sir.
Q. Was it before or after the meeting at the school house on April 6th, do you remember about that meeting?
A. Yes, sir.
Q. Was it before or after that? A. It was after.
Q. About how long afterwards?
A. Well, I don't remember just how long it was after.
Q. Your father,—what are his initials? What is his first name? A. J. W. Howard, John W.
Q. Is he a member of the union there? A. Yes.
Q. He lived there at that time? A. Yes, sir.
Q. And he lives there now? A. Yes, sir.
3798 Q. Now at the time that you state that these men spoke to you where was that, Miss Howard?
A. Between my house and the school house.
Q. What time in the day was that?
A. In the morning.
Q. You did not know the men at all? A. No, sir.
Q. You did not know who they were? A. No, sir.
Q. You had never seen them before?
A. No, sir,—yes, sir, I had seen them before going in and out of the camp.
Q. What is that?
A. I had seen them going in and out of the camp.
Q. At the camp? A. Yes, sir.
Q. You reported that when you got home, did you?
A. No, sir.
Q. Did you report it to your teacher? A. No, sir.
Q. You did not report that to anyone? A. No, sir.
Q. You first stated,—you said something about March, something that happened to you in March; what was that, when you first went on the stand awhile ago? A. In March?
Q. Yes, in March, when you first went on the stand awhile ago. Do you remember what that was?
A. That was me and the girl.

A. Juror: You will have to talk a little louder, we cannot hear you.
Q. Was this improper proposal you are speaking about in March?

A. As well as I remember it was along the last of March.

Mr. McDonough: That is all.

Redirect-Examination

By Mr. Grant:

Q. Was it before the guards had been put around the Bache-Denman properties or afterwards that this happened?

A. It was afterwards.

Mr. Grant: That is all.

(Witness excused.)

3799 Miss Theresa Del Rosa, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Grant:

Q. What is your name? A. Thersa Del Rosa.

Q. Where do you live, Miss Del Rosa?

A. Prairie Creek.

Q. How long have you been living there?

A. About 12 years.

Q. How long have you been living there?

A. I said about 12 years.

Q. Did you go to school at Prairie Creek in the spring of 1914? A. Yes, sir.

Q. Were you going to school there when the guards were put around the Bache-Denman properties?

A. Yes, sir.

Q. During the time after they were put around there in April, from April 1st up to April 15th, when school was in session, did you have any insults pointed at you by any of those people connected with No. 4 property?

A. Yes, sir.

Q. Tell the court and jury about that.

A. They insulted us that time when me and that girl were at the toilet.

Q. What girl?

A. Ella Howard, they offered us two dollars.

Q. And what did they say, or do to you, there?

A. They offered us two dollars.

Q. Offered you two dollars?

A. Yes, sir, and said if we didnt go up there that they would shoot us.

Q. Where were they when they were making that
3800 proposition to you? A. Up there by the toilet.

Q. By the toilet? A. Yes, sir.

Q. Do you know that they came from the Bache-Denman property over there?

A. Yes, sir, I seen them go in and out.

Q. You saw them go in and out? A. Yes, sir.

Q. Did they have guns with them? A. Yes, sir.

Q. Do you know anything about them having made any improper proposals to you or Miss Howard at any other time?

A. I knowed that me and Mary and Elberta Johnson were coming home from school and we met three scabs, and they insulted us then.

Q. What did they say to you?

A. They called us bad names.

Q. Did they belong inside of the Bache-Denman enclosure? A. Yes, sir.

Q. You have seen them going in and out? A. Yes, sir.

Q. They called you bad names? A. Yes, sir.

Q. State whether or not those men came from the Bache-Denman property, came around the school at recess and noons, and said anything?

A. Yes, sir, they used to call us bad names every time they came by there.

Q. Was that a frequent occurrence? A. Yes, sir.

Cross-Examination

By Mr. McDonough:

Q. What did you say your age was?

A. I will be 16 my birthday.

Q. Sixteen,—then this was in 1914,—do you remember the year, yourself, Miss Del Rosa,—do you remember what year it was? A. 1914.

Q. You were then thirteen years of age at that time, were you? A. Yes, sir.

3801 Q. Is that right? A. Yes, sir.

Q. When is your birthday?

A. The 26th of April, I will be 16 the 26th of April.

Q. You will be 16 the 26th of next April?

A. This April coming.

Q. You will be 16? A. Yes, sir.

Q. Then you were 15 last April?

A. I am 15 now, I will be 16 this April coming.

Q. Then you were just 12 then at the time that these things happened? A. Yes, sir, 12.

Q. You are larger now than you were then, are you?

A. Yes, sir.

Q. And you lived there, did you?

A. Yes, sir, all the time.

Q. Your father lived there? A. Yes, sir.
Q. And he is a union miner? A. Yes, sir.
Q. Do you know what month it was that these things occurred about which you have testified?
A. About the last of March, between March and April.
Q. Between March and April?
A. Yes, sir, before school was out, and school was out the 17th of April.
Q. School was out the 17th of April? A. Yes, sir.
Q. And this was sometime before school was out?
A. Yes, sir.

Witness excused.

3802 Miss Elberta Johnson, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct Examination

By Mr. Grant:
Q. Your name is Elberta Johnson? A. Yes, sir.
Q. Where do you live, Miss Elberta?
A. Prairie Creek.
Q. How long have you lived there? A. 15 years.
Q. You were reared there, were you?
A. No, sir, I have been raised there, I was born in Little Rock.
Q. Did you attend school at the Prairie Creek school house after the men had been put around Mr. Bache's mines, —after Mr. Bache's mines had guards put around them there?
A. Yes, sir.
Q. You were may state to the court and jury whether or not you were ever at any time insulted by any of the people who were working there, after the 1st of April, the men in charge of the property?
A. Why, I was insulted two or three times by the scabs that worked there at the Bache-Denman mines; that worked there.
Q. Now, in the latter part of April, were you hunting for a cow, and had some trouble there with them?
A. Well, that was just in front of the house, as I was going over the railroad, that Bailey,—I forget his given name.
Q. Riley Bailey? A. Yes, sir.
Q. Now, you may tell the court what that trouble consisted of?

A. I started across to the railroad track after the cow, and the dog run in front of me, and I said, "Get out of the way, I will knock you head off", and he just got off of
3803 the train, and he said, "Yes, you will, you little freckled face slut."

Q. That was Riley Bailey? A. Yes, sir.

Q. He was one of the guards working there?

A. Yes, sir.

Q. Did he have a gun when he made that remark?

A. No, sir, not that I remember, but I see him with a gun afterwards.

Q. You saw him with a gun afterwards? A. Yes, sir.

Q. Now, one time in July when you went to pick berries, or were hunting for a cow, or something like that, did you have any trouble with any of the employes of the Bache-Denman property?

A. One evening I went down for the cow, and took a pail with me to pick some berries, to pick some blackberries, and the cow got inside of the rope, they just had one rope there, and there was a boy, I believe they called him Slim, and I asked him if I could go in there, and he insulted me, and he wouldn't let me go in unless I did what he wanted me to, and I let the cow stay and I came home.

Q. Was he carrying a gun at that time?

A. Yes, sir, he had a gun and a whole lot of shells around him.

Q. You have seen him going in and out of the property there?

A. Yes, sir, he told me he was a guard, and he talked to me a good while.

Q. Now on another occasion from school, did you meet some of the employes of the Bache-Denman property along about the same time that you have been talking about?

A. Yes, sir, I met two walking and one on a horse.

Q. Did they say or do anything to you then?

A. Yes, sir.

Q. What was it?

A. They cursed us and also insulted us and told us
3804 to come up there on the hill.

Q. Did they say bad, or use bad words?

A. Yes, sir, awful bad words, just as bad as anybody could.

Q. What did you girls say to that?

A. I didn't say nothing to them, I said "I will tell Will on you", and they said, "Yes, we will fix your brother Will, and put fixings to you, [to]."

Q. That is what they said?

A. That is what they said to me.
Q. Did you know that the people that were doing this talking were the people that worked at the Bache-Denman property? A. They stayed in that bull pen.
Q. You saw them going in and out?
A. Yes, sir, all three had guns.
Q. About what time in 1914 did this happen?
A. We were going to school then.
Q. That was in April?
A. Yes, sir, before the 17th of April.
Q. School closed on the 17th of April, 1914?
A. Yes, sir.
Q. Now then, do you know any other time when they insulted you, when you were with Miss Jessie Howard and Miss Thompson? A. Yes, sir.
Q. When was that?
A. It was when school was going on, before the 17th of April, before school was out that we were up at the toilet.
Q. Up at the toilet? A. Yes, sir.
Q. And what took place, what did they say or do?
A. They insulted us, and just being plain about it, they taken their pants off, or half way off there, and offered
3805 us money.
Q. And who was it doing that?
A. It was some of those scabs, I don't know who it was.
Q. Did you see them going in and out of the Bache property? A. Yes, sir, I seen them.
Q. Did they have guns with them out there?
A. Yes, sir, they did.
Q. And at any other time than at the same toilet, did you have any trouble with them? A. Yes, sir, once afterward.
Q. When was that, what did the trouble consist of?
A. I think that was the following week, the latter part of the week, with just one man; there was just one man on a horse, and there were two or three of us girls up there, and he did just about the same way, he insulted us and offered us money.
Q. They were men that you knew to be employed there?
A. I knew them to be Bache-Denman employes.
Q. Had you seen them going in and out?
A. Yes, sir, I had.
Q. Did you have guns?
A. Yes, sir, and I would see them when I would go home from school that evening, I would see them going to the depot with guns on their shoulders.
Q. Do you know the name of the man on horseback?
A. I didn't know their names.

Q. Were there any other occasions that you girls were insulted by these people from the Bache-Denman property?

A. Out back of the school house, where we used to jump off of the bank, there was a little branch there, and down into the sand, we were insulted several times out there, at different times.

3806 Q. In what manner?

A. Oh, they just insulted us, and would not all the time offer us money, but once in a while they would.

Q. Would they use bad language?

A. Yes, sir, they used bad language, and they would cuss, they would cuss awful.

Q. They throw anything at you, rocks or anything of that kind? A. That called us,—I ain't a going to say what.

Q. Called you bad names? A. Yes, sir, they did.

Q. Were you at home, at your home, when any of the Bache-Denman employes, after April 1st, 1914, cursed one of your sister's children? A. Yes, sir.

Q. Now, tell the court and jury about that?

A. They had put a two-by-four or something out in the road, and they got out there, and they would come up in a wagon to meet the train, to get something from the train, and they picked that up and throwed it over, and throwed it at the children, and came close, came almost hitting one of them, and my sister said, "Hey, there, you like to hit that kid", and he said, "I wouldn't give a God damn if I killed every union son-of-a-bitch's kid in this country", or something like that.

Q. That was the men working there at the Bache-Denman property? A. Yes, sir.

Q. Did that man have a gun that made that statement?

A. Yes, sir, there were two or three of them, at night, and they all had guns.

Q. How far did you live from the Prairie Creek station, where the people got off of the train at Prairie Creek?

A. About as far as from here over that other court house, I reckon.

Q. About 200 feet from it, would you say?

3807 A. About that far, I guess.

Q. Did you see people going from the Prairie Creek school house away from the depot at Prairie Creek, to the stockade at the Bache-Denman property?

A. Yes, sir, we lived between the school house and No. 4. mine, and they would go right along in front of our house down to the mine.

Q. State how they traveled, were they armed or not?

A. Yes, sir, they would go up there, the guards would go up and meet the men that were coming in with guns; they would go by our house cussing and using all kinds of bad language.

Q. How long did that course of conduct last?

A. For a long time, as long as they stayed there, until the 17th of July.

Q. Until the 17th of July? A. Yes, sir.

Mr. Grant: Take the witness.

Cross-Examination

By Mr. McDonough:

Q. Were you there the 17th of July? A. No, sir.

Q. Where were you?

A. Until the morning of the 17th of July, I got up and I went over,—I told mamma, we had taken mamma off several times when we heard there would be trouble, and we would have to take her in a wagon off over the hill; she was sick, she had the dropsy and couldn't walk, and that morning it made her sick, a whole lot worse, and she came almost dying; and she said "I don't think I can stand to go over there", and she said, "I will stay here if they do kill me", and she stayed, she went in the cellar, and I went over to Jim Keafers, over the mountain.

Q. Where?

A. Jim Keafers, over on Sugar Loaf Mountain.

Q. Had you taken your mother away before the 17th of July?

3808 A. Yes, sir.

Q. The day before?

A. I don't know whether the day before or not.

Q. You heard there was going to be trouble?

A. Yes, sir.

Q. Was your father there?

A. My father and mother had been separated since I was six years old, he was in Arizona.

Q. He was not there? A. No, sir.

Q. Was there anyone of your family engaged in coal mining, working in the mines? A. I had tw brothers.

Q. Were they there?

A. Yes, sir, they were both there that morning.

Q. What were their names?

A. Charley Johnson and Bill Johnson.

Q. Where were they working at that time, if anywhere?

A. They were not working anywhere.

Q. Were they members of the union? A. Yes, sir.

Q. Living at home? A. Yes, sir.
Q. What were the ages of those brothers?
A. Well, one was 17 then, the youngest one, and the other must have been 20 or 21, I don't know which.
Q. What is your age now?
A. I am 16 years old; I will be 16 the 1st of April.
Q. The 1st of next April? A. Yes, sir.
Q. Then how many years ago was that?
A. When? What?
Q. These things that you have been talking about?
A. Three years ago, 1914.
Q. You were then 12 years old? A. Yes, sir.
Q. Now, when did these difficulties first begin?
A. Well, along about the 1st of April.
3809 Q. None of them before that time?
A. Well, whenever,—they never come, I don't believe, I may be mistaken, but when they got to acting so smart, and like that place belonged to them, it must have been along about the 6th of April.
Q. You mean the scabs acted like the place belonged to them?
A. Yes, sir, or just before the 6th of April, when there were so many people gathered down there.
Q. They began along in April to act like the place belonged to them? A. Yes, sir.
Q. And then it was that these things occurred that you have described? A. Yes, sir.
Q. Your two brothers lived there during all of April, did they?
A. Well, no,—both of them went off to get a job of work to see if they could get work some place.
Q. They had been working at Mine No. 4 before that?
A. Yes, sir.
Q. Both of them?
A. What time it worked, it didn't work much.
Q. While it did work under union conditions they worked there? A. Yes, sir, they worked there when it did work.
Q. Was any one of your brothers known as Blue Johnson?
A. Yes, sir.
Q. Which one is that, the older one?
A. The younger one.
Q. He was the one that was 17 at that time?
A. Yes, sir.
Q. Where is he now? A. Oh, he is over here in jail.
Q. Where? A. He is over here in jail.
Q. In the city of Ft. Smith? A. Yes, sir.
Q. Where is the other brother?

A. He is at home, Prairie Creek.
3810 Q. Down in Midland?
A. Yes, sir, Prairie Creek.
Q. Who was your teacher that was teaching school at that time? A. Walter McCord.
Q. Do you know of any of the officers that lived there in that neighborhood at that time? A. The officers?
Q. The officers. You know what I mean by officers?
A. Jim Slankard, he was an officer, and I think John Davis was.
Q. Do you know Mr. Fitzgerald? A. Yes, sir.
Q. He was an officer? A. Yes, sir.
Q. He lived there right close?
A. He lived in Midland, I believe.
Q. How far did he live from where you lived?
A. Three miles, or two and three-quarters.
Q. How far did you live from the Prairie Creek school house? A. About a quarter of a mile.
Q. Which direction, toward Hartford?
A. Yes, sir, toward Hartford.
Q. And you live in Prairie Creek?
A. Yes, sir, I live right in Prairie Creek.
Q. Did Mr. Fitzgerald live in that neighborhood?
A. He lived in Midland, and I lived at Prairie Creek No. 4.
Q. Did any justice of the peace or constable live at Prairie Creek where you lived? A. None that I know of.
Q. You don't know whether they did or not?
A. Mr. Evans is justice of the peace now, but I don't think they had one before.
Q. You made a report of these matters to your brothers, did you? A. Yes, sir.
Q. As each one occurred you stated it to your brothers?
3811 A. Yes, sir.
Q. As soon as you saw them? A. No, sir.
Q. Now, I will ask you again if you remained there at home yourself all day on the 17th, the day of the battle?
A. I told you I went over the hill to Jim Keafers.
Q. How far away was that?
A. It was over the mountain, it must have been two or three miles.
Q. Toward Hartford?
A. It was over on Sugar Load Mountain, right over in front of our house.
Q. You went over there to get away from the battle?

A. I went over there to get away from the battle, I was feared I would get shot.
Q. You heard it was coming off?
A. I heard it that morning, but I didn't much believe it until I heard the shooting down there at the bull pen.
Q. You left after you heard the shooting?
A. Yes, sir, I heard four or five shots, and I run, and took my sister's baby and she stayed with my mother.
Q. That was all the shots that you heard?
A. The further I went the more shooting I heard.
Q. Do you know John T. W. Davis? A. Yes, sir.
Q. He lived over at Prairie Creek at that time?
A. Yes, sir.
Q. He was an officer?
A. Yes, sir, I said Mr. Davis a while ago.
Q. How is that?
A. I said Mr. Davis was an officer a while ago.

Mr. McDonough: That is all.

Witness excused.

3812 (A recess was here taken of five minutes.)

Mr. McDonough: There is one additional question that I would like to ask the last witness.

Miss Elberta Johnson, recalled for further cross-examination, testified as follows:

By Mr. McDonough:
Q. Did you have Riley Bailey arrested? A. Yes, sir.
Q. When was that?
A. I don't know, it must have been the last of April or along in May sometime.

Witness excused.

3813 H. H. Martin, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct-Examination

By Mr. Warrum:
Q. State your name to the court. A. H. H. Martin.
Q. What official position do you occupy, or position of any kind? A. Operator for the Rock Island.

Mr. Hull: I am familiar with this document, and we will admit that that is the original, to save time.

Mr. Warrum: It seems to be a part of some of the records, and the reporter had better be instructed to make a copy of it.

The Court: Let it go in the record; without objection that can be done.

Mr. Warrum (reading): "American Express Company, Hartford, Arkansas. 7/3/14. Received from O. Layton subject to the classification of tariff on date hereof, 16 bx's small arms and amu, consigned to F. W. Holt, McAlester, Oklahoma, which the company agrees to carry upon the following terms and conditions, to which the shipper agrees, and which is evidenced by this receipt." I will omit the conditions printed on the receipt in small letters, because it doesn't pertain to this case.

(Signed) H. H. MARTIN."

Witness excused.

3814 MRS. JESSIE THOMPSON, called as a witness in behalf of the defendants, having been duly sworn, testified as follows:

Direct-Examination

By Mr. Grant:

Q. Your name is Mrs. Jessie Thompson? A. Yes, sir.
Q. Were you formerly Miss Jessie Howard? A. Yes, sir.
Q. Did you go to school at Prairie Creek school house after the non-union people took charge of the Bache-Denman property, before the school closed? A. Yes, sir.
Q. Do you remember when the school closed? A. Yes, sir.
Q. When? A. The 17th of April.
Q. 1914? A. Yes, sir.
Q. Now, Mrs. Thompson, at any time after the non-union people were put there at the Bache-Denman property, did you have any trouble with them, or did they say anything to you out of the way? A. Yes, sir.
Q. Tell the court and jury what it was and when it was?
A. At different times. One time me and Elberta Johnson were at the toilet, and there was three scabs up on the hill, one on a horse and two on foot, and they all three had guns, and they offered us money, and they just come, in plain words, the same as Elberta said, they taken their pants half way off.
Q. Did they want you to accompany them any place?
A. Yes, sir.
Q. Where?
A. They wanted us to come up where they were at.
Q. You say they offered you money? A. Yes, sir.

Q. At any other time than that, did they make any insulting proposals to you, and if so, what?

A. Back there where we played, jumped off of the bank, there was a little branch that run along back of the
3815 school house, and along the side, too, and we used to jump off of there in the sand, and they insulted us there, too, sometimes.

Q. What did they do or say to you?

A. They would just insult us, and offered us money sometimes, and sometimes they would not.

Q. Did they curse you? A. No, sir, not that I remember.

Q. Did they have guns with them? A. Yes, sir.

Q. Did they ever make any threats to shoot you, or anything of that kind?

A. No, sir, not at that time now, not back there they didn't.

Q. Was there any time when they did make such threats?

A. Yes, sir.

Q. Tell the jury when that was, and at what time and what was said and where it was?

A. We were on the way to school one morning, me and my sister and my brother Charley, he was about 50 or 100 yards behind us, and this man, I don't know who he was, we met him, but he pulled his gun and said he was going to shoot us, it was bright, and it looked like nickel-plated, and we could see it.

Q. And what did he say to you?

A. He said, "I will shoot you."

Q. And pointed the gun at you? A. Yes, sir.

Q. Then what happened?

A. We went on about our business and went on to school.

Q. Did your brother Charley say anything to him about it?

A. He told him to put his gun back in his pocket.

Q. Did he use any bad words there on that occasion, if so, what did he say?

A. No sir, I don't believe he did; not that I remember.

3816 Q. Did he make any indecent gestures to you?

A. Yes, sir, he put his hand up to his nose like this (indicating).

Q. Do you know of any other occasion when there would be insults of these people toward the young ladies and girls going to school there at Prairie Creek school house?

A. I don't remember; they insulted us a good many times.

Q. Would they come around the school house at play time?

A. Yes, sir.

Q. What would they do then?

A. They would just insult us, and speak all kinds of unspeakable words to us.

Q. Did you see those people travel the public roads?
A. Yes, sir.
Q. Did they go armed or how? A. Armed.
Q. Did they use any language, any indecent language along the road as they were traveling?
A. Yes, sir, lots of times they have.

Mr. Grant: Take the witness.

Cross-Examination

By Mr. McDonough:
Q. What is your age now, Mrs. Thompson?
A. My name is Mrs. Thompson and my age is 17, and I will be 18 in June.
Q. You are already 17?
A. Yes, sir, I was 17 last June and I will be 18 next June.
Q. 18 next June? A. Yes, sir.
Q. When were you married?
A. I will be married two years next March, the last day.
Q. And this was in 1914, these matters that you are telling about? A. Yes, sir.
3817 Q. You say one of them pointed a gun at you?
A. Yes, sir.
Q. And your brother told him to put the gun up?
A. Yes, sir, told him to put the gun in his pocket.
Q. And he put it up?
A. Yes, sir, and then he put his finger to his nose, and went on, he was in a wagon.
Q. He didn't shoot the gun? A. No, sir.
Q. What age was your brother at that time?
A. He is 5 years older than I am: I don't know how old he was.
Q. 22 now, and three years ago, he was about 19 at that time?
A. Yes, sir, I think he was.
Q. Somewhere,—18 or 19? A. Yes, sir.
Q. And your brother was going to school, was he at the time?
A. No, sir, he was not going to school; he was just escorting me and my sister down there and back, to and from school.
Q. Was your brother a union miner? A. Yes, sir.
Q. He had been working at No. 4 Prairie Creek?
A. Yes, sir.
Q. When that was working union?
A. Yes, sir, when they were working union.
Q. What is your father's first name?
A. John Wesley Howard.
Q. Was he at home at that time?

A. Yes, sir, I believe he was.
Q. He resided at home generally along at that time?
A. Yes, sir.
Q. He had previously worked at Prairie Creek No. 4, had he not?
A. Yes, sir, he had worked there, but it had been a long time; he had a cancer on his finger, and couldn't work.
Q. Now, do you remember what month these things occurred, that you described?
3818 A. When me and my sister and brother were going to school it was, as near as I remember, October or November, somewhere along there.
Q. October or November?
A. Yes, sir, as well as I can remember.
Q. In what year?
A. It was the same year that the scabs were there, in 1914.
Q. Do you remember what year, do you remember that was in 1914?
A. Yes, sir, I believe it was.
Q. And it was October or November that this occurred?
A. Yes, sir.
Q. Could you make a placing of it as between those months, would you say whether it was October or November?
A. No, I couldn't, that was in the winter school, that was not the summer school that Mr. McCord was teaching on the 17th of April; it had closed, and it was the next school, the next term.
Q. Who was your teacher at that time?
A. Mr. O. H. Phelps.
Q. He didn't teach there in the spring?
A. I don't believe he did; Mr. McCord taught then.
Q. Who? A. Mr. Walter McCord.
Q. What is your best recollection as to whether that incident occurred in November or October, in that year?
A. It was October, it seems to me like.
Q. It seems to you like it was October? A. Yes, sir.
Q. But it may have been in November?
A. It might have been.
Q. Was there just one man there at the time?
A. Just one on the wagon, yes, sir.
Q. On the wagon? A. Yes, sir.
Q. And he had,—what was it, a pistol or shot gun?
A. It was a pistol, as well as we could see it.
3819 Q. How far were you from the man at the time?
A. About as far as from here to the end of that thing.

Q. The map up there? A. Yes, sir, about that far.
Q. Were you going along the road?
A. Yes, sir, the public road.
Q. What road was it?
A. The road that leads from Midland to Hartford.
Q. Did you live in Midland?
A. No, sir, lived there close to Prairie Creek.
Q. Your father lived there at the time; your father was not at home? A. Yes, sir.
Q. And you were going to school? A. Yes, sir.
Q. And that was in the morning?
A. Morning or noon, we always went home at noon.
Q. Did you report that to your father? A. Yes, sir.
Q. How far was it from your home to the school house?
A. Not a quarter of a mile.
Q. That was the school house near Prairie Creek No. 4?
A. Yes, sir.
Q. And you were on the way to that school? A. Yes, sir.
Q. And you were going from the town of Prairie Creek to that school house? A. No, sir.
Q. You were going from your home? A. Yes, sir.
Q. What direction was your home from Prairie Creek?
A. North.
Q. Your home was nearer to the school house than Prairie Creek was? A. Yes, sir.
Q. Did you live north of the school house? A. Yes, sir.
Q. Were you acquainted with the man that handled the gun?
A. No, sir, I was not; I was not acquainted with any of
3820 them in particular.
Q. And your brother was near you at the time?
A. Yes, sir, he was between 50 and 100 yards from us.
Q. Was he armed? A. No, he was not armed.
Q. Didn't any of you know the man?
A. No, sir, I don't guess my brother knowed him, I don't know.
Q. Was he in the wagon? A. Yes, sir.
Q. Which direction was he going?
A. North toward my home.
Q. And following that road it would lead him right by your home?
A. Yes, sir, in about a hundred yards of my house.
Q. Was your father at home at that time?
A. I don't know whether he was at home or not, but he is usually at home, he worked in the field on the farm.
Q. He had quit working at the mines because they had quit working union?

A. No, sir, he quit on account of his finger, he couldn't work in the mines on account of his finger; he had a cancer on his finger.

Witness excused.